The American Political Science Review

Vol. VII AUGUST 1913 No. 3

COURTS AND LEGISLATION[1]

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Let me begin with a quotation:

"[There] is no doubt but that our law and the order thereof is over-confuse[d]. It is infinite and without order or end. There is no stable ground therein nor sure stay; but every one that can color reason maketh a stop to the best law that is before time devised. The subtlety of one serjeant shall [make] inert and destroy all the judgments of many wise men before time received. There is no stable ground in our common law to lean unto. The judgments of years be infinite and full of much controversy. . . . . The judges are not bound to follow them as a rule, but after their own liberty they have authority to judge, according as they are instructed by the serjeants, and as the circumstance of the case doth them move. And this maketh judgments and processes of our law to be without end and infinite; this causeth suits to be long in decision. Therefore, to remedy this matter groundly, it were necessary in our law to use the same remedy that Justinian did in the law of the Romans, to bring this infinite process to certain ends, to cut away these long laws, and by the wisdom of some politic and wise men institute a few and better laws and ordinances."[2]

Such are the words Starkey puts into the mouth of Reginald Pole in a dialogue submitted to Henry VIII. If in large part they

[1] Address delivered before the American Political Science Association at Buffalo. December 28, 1911. Note 13 has since been added.

[2] Maitland, *English Law and the Renaissance*, 42.

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have a familiar sound, and need only a dress of modern English to pass for a clipping from a recent periodical, an emanation from the American legal muckraker, it is partly because the relation of judging to law-making is a perennial problem and partly because that time was (as the present is also) a period of legislation following upon one of common law. In a later period of legislative activity, after an ineffectual attempt to reform the law and procedure of England, Cromwell was forced to say, referring to bench and bar, "the sons of Zeruiah are too hard for us." In still a later period of legislation, the period of the legislative reform movement, Bentham was wont to say that the law was made by "Judge & Company"[3]—i.e., by the bench and bar—and to accuse the lawyer of chuckling "over the supposed defeat of the legislature with a fond exultation which all his discretion could not persuade him to suppress." Today the relation of courts to legislation has become a world-wide question, following the development of legislative law-making through modern parliaments. On the Continent, the last decade has seen the rise of a great juristic literature upon the subject. Whether, as in France, new demands are made upon old codes, which have acquired a settled gloss of doctrine and jurisprudence, or, as in Germany, the principles of a new code await juristic development at many important points, or, as in the United States, a rapidly growing body of written law is adjusting to a stable and none too flexible body of traditional principles, under one name or another, juridical method has become a chief subject of discussion. Even our problem of judicial power with respect to unconstitutional legislation has ceased to be local. Marbury vs. Madison has been cited and followed by a court of Roman Dutch lawyers in South Africa.[4] With the adoption of a written constitution, the subject has become acute in Australia and Australian courts and lawyers are insisting upon the American doctrine in the face of a decision of the privy council in England to the contrary.[5] If we bear in mind that the relation of courts to legisla-

[3] *Works* (Bowring edition) v, 369.

[4] Brown vs. Leyds, 14 *Cape Law Journal*, 94.

[5] Rex vs. Barger, 6 Com. L. R. 41, 63, 81. See Webb vs. Outrim [1907] A. C. 81.

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tion is neither a new question nor a local question, we shall be able to look upon more than one aspect of the matter with greater equanimity.

According to the beautifully simple theory of separation of powers three wholly distinct departments have for their several and exclusive functions to make laws, to execute laws, to apply laws to controversies calling for judicial decision. It is a commonplace that a complete separation of this sort has never existed anywhere and that the lines, as we draw them in our constitutional law, are historical rather than analytical. But the theory itself, so far as it confines the judicial function to mere application of a rule formulated in advance by an extra judicial agency proceeds upon an eighteenth century conception of law and of law-making which we cannot accept today.

Jurists of the eighteenth century had no doubt that a system of law, complete in every detail, might be constructed for any country by any competent thinker by deduction from abstract principles. They thought of the legal system as a structure which might be built over again at pleasure in accordance with one's ideal of right. Hence their conception of legal science was a discovery and formulation of this ideal, as something unchangeable and independent of human recognition, whereby they might hand over to the legislator a model code, to the judge a touchstone of pure law, to the citizen an infallible guide to conduct. So long as men believed in this absolute natural law, they were justified in laying down that it was for the legislator to discover and enact this model code and for the judge simply to apply it. And even after they ceased to believe in it, two theories which had great currency served to keep alive the resulting conception of the judicial function. One was the tradition of absolute legal principles, discovered and applied by courts, but existing prior to and independent of all judicial decision. Laid down by Blackstone, this notion that judicial decisions were merely evidence of law, or of that part of the law not evidenced by statutes, was accepted as a fundamental proposition. Austin characterized it justly as "the childish fiction, employed by our judges, that judiciary or common law is not made by them, but is a miraculous something,

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made by nobody, existing, I suppose from eternity, and merely declared from time to time by the judges."[6] Historically, it represents the Germanic conception of law, the "sighing of the creature for the justice and truth of his creator"[7] which, Heusler tells us, is to be found in every law book of the middle ages. Such a tradition, well established in the eighteenth century, lent itself at once to the juristic theory of that time and to the resulting theory of the judicial office. Moreover, it was reinforced presently from another quarter. After the historical jurists had overthrown the eighteenth century juristic theory, they acquiesced in a learned tradition on the Continent which confined historical study to the texts of the Roman law and they created a learned tradition in America which confined the jurist to the classical common law. Accordingly, ostensibly the judicial function remained purely one of application. Men differed only as to what was to be applied. To some it was the command of the sovereign, expressed normally in legislation. To others it was natural law, which might at any time be revealed as a whole to the legislator and promulgated in a code. To others it was the principles of the common law, evidenced by prior decisions or declared by statutes. To others it was the body of legal principles implicit in the sources to which the learned tradition confined historical study and derived therefrom by legal reasoning. In any event it was assumed that the judge in every sort of case merely applied a rule which had a prior independent existence.

A German writer has put the received theory thus: The court is an automaton, a sort of judicial slot machine. The necessary machinery has been provided in advance by legislation or by received legal principles, and one has but to put in the facts above and draw out the decision below. True, he says, the facts do not always fit the machinery, and hence we may have to thump and joggle the machinery a bit in order to get anything out. But even in extreme cases of this departure from the purely automatic, the decision is attributed, not at all to the thumping and joggling process, but solely to the machine.[8] It goes without saying that

[6] *Jurisprudence* (4 ed.), 655.
[7] *Institutionen des deutschen Privatrechts*, §1.
[8] Kantorowicz, *Rechtswissenschaft und Soziologie*, 5.

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such a conception of the process of judicial decision cannot stand the critical scrutiny to which all legal and political institutions are now subjected. Men insist upon knowing where the preëxisting rule was to be found before the judges discovered and applied it, in what form it existed, and how and whence it derived its form and obtained its authority. And when, as a result of such inquiries, the rule seems to have sprung full-fledged from the judicial head, the assumption that the judicial function is one of interpretation and application only leads to the conclusion that the courts are exercising a usurped authority. The true conclusion is rather that our theory of the nature of the judicial function is unsound. It is a fiction, born in periods of absolute and unchangeable law. If all legal rules are contained in immutable form in holy writ or in twelve tables or in a code or in a received corpus juris or in a custom of the realm whose principles are authoritatively evidenced by a body of prior decisions, not only must new situations be met by deduction and analogical extension under the guise of interpretation, but the inevitable changes to which all law is subject must be hidden under the same guise. Today, when all recognize, nay insist, that legal systems do and must grow, that legal principles are not absolute, but are relative to time and place, and that juridical idealism may go no further than the ideals of an epoch, the fiction should be discarded. The analytical jurists did a great service to legal science when they exposed this fiction, though their conclusion that a complete code should be enacted in order to put an end to the process of judicial law-making shows that they saw but half of the truth. For the application of law is not and ought not to be a purely mechanical process. Laws are not ends in themselves; they are means toward the administration of justice. Hence within somewhat wide limits courts must be free to deal with the individual case so as to meet the demands of justice between the parties. Any considerable narrowing of these limits, any confining of the judicial function by too many hard and fast rules soon defeats the purpose for which law exists. Application of law must involve not logic merely but a measure of discretion as well. All attempts to eradicate the latter element and to make

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the law purely mechanical in its operation have ended in failure. Justice demands that instead of fitting the cause to the rule, we fit the rule to the cause. "Whoever deals with juristic questions," says Zitelmann, "must always at the same time be a bit of a legislator;"[9] that is, to a certain extent he must *make* law for the case before him.

Our first step, then in considering the relation of courts to legislation, must be to analyze the judicial function.

Judicial decision of a controversy, the facts being ascertained, has been said to involve three steps: (1) finding the rule to be applied, (2) interpreting the rule, (3) applying the rule to the cause. The first process may consist merely in laying hold of a prescribed text of code or statute, in which case it remains only to determine the meaning of the rule and to apply it. More commonly the first process involves choice among competing texts or choice from among competing analogies, so that the several rules must be interpreted in order that intelligent selection may be made. Often such interpretation, using the term to mean a genuine interpretation, shows that no existing rule is adequate to a just decision and it becomes necessary to provide one for the time being. The rule so provided may or may not become a precedent for like cases in the future. In any event, this process has gone on and still goes on in all systems of law, no matter what their form and no matter how completely in their juristic theory they limit the function of adjudication to the purely mechanical.

Perhaps the classical instance of the process referred to is to be found in article 5 of the French civil code. That article reads as follows: "Judges are forbidden, when giving judgment in the cases which are brought before them, to lay down general rules of conduct or decide a case by holding it was governed by a previous decision." Its purpose was, as we are told by an authoritative commentator, to prevent the judges from forming a body of case law which should govern the courts and to prevent them from "correcting by judicial interpretations, the mistakes made

[9] Zitelmann, *Die Gefahren des bürgerlichen Gesetzbuches für die Rechtswissenschaft*, 19.

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in the [enacted] law."[10] After a century of experience in the endeavor to carry out this purpose, French jurists are now agreed that the article in question has failed of effect. Today the elementary books from which law is taught to the French students, in the face of the code and of the Roman tradition, do not hesitate to say that the course of judicial decision is a form of law.[11]

All of the three steps above described are commonly confused under the name of interpretation, because, in primitive times, when the law is taken to be God-given and unchangeable, the most that may be permitted to human magistrates is to interpret the sacred text. The analytical jurists first pointed out that finding a new rule and interpreting an existing rule were distinct processes, and Austin distinguished them as spurious interpretation and genuine interpretation respectively, since his belief in the possibility of a complete body of enacted rules, sufficient for every cause, led him to regard the former as out of place in modern law.[12] Indeed he was quite right in insisting that spurious interpretation *as a fiction* was wholly out of place in legal systems of today. But experience has shown, what reason ought to tell us, that this fiction was invented to cover a real need in the judicial administration of justice and that the providing of a rule by which to decide the cause is a necessary element in the determination of all but the simplest controversies. More recently the discussions over the juridical handling of the materials afforded by the modern codes has led Continental jurists to distinguish application of rules to particular causes from the more general problem of interpretation. Indeed, under the influence of the social philosophical and sociological jurists, who have insisted that the essential thing in administration of justice according to law is a reasonable and just solution of the individual controversy,

[10] Laurent, *Droit civil Français*, i, §§250–262.

[11] Baudry-Lacantinerie, *Précis de droit civil* (8 ed.) preface; Capitant, *Introduction à l'Étude du droit civil* (3 ed.) 30 ff. See also Demogue, *Notions fondamentales du droit privé*, 216 ff.; Esmein, La jurisprudence et la doctrine, *Revue trimestrielle de droit civil*, i, 1; Saleilles, Le code civil et la méthode historique, *Livre du centennaire du code civil*, i, 97; Gény, *Méthode d'interprétation*, §§ 39–59.

[12] *Jurisprudence* (4 ed.) 1026–1036. See my paper, "Spurious Interpretation," 7 *Columbia Law Rev.* 379.

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application of law has become the central problem in present-day legal science.

Given the three steps in the decision of causes, as courts now proceed, namely, finding of rules, interpretation of rules, and application to particular controversies of the rules when found and interpreted, let us consider the relation of the courts to legislation with reference to each.

It has been a favorite notion of legislators that the finding of law could be reduced to a simple matter of genuine interpretation; that a body of enacted rules could be made so complete and so perfect that the judge would have only to select the one made in advance for the case in hand, interpret it and apply it.[13] As has been said, this was the eighteenth century idea. Thus in the code of Frederick the Great the "intention was that all contingencies should be provided for with such careful minuteness that no possible doubt could arise at any future time. The judges were not to have any discretion as regards interpretation, but were to consult a royal commission as to any doubtful points, and to be absolutely bound by their answer. This stereotyping of the law was in accordance with the doctrines of the law of nature, according to which a perfect system might be imagined, for which no changes would ever become necessary, and which could, therefore, be laid down once for all, so as to be available for any possible combination of circumstances."[14] Bentham and Austin, who saw clearly enough that the doctrine of natural law of the eighteenth century was untenable, none the less had the same idea of the possibility of a perfect code, self-sufficient and adequate to every cause. Accordingly Austin named as a de-

[13] "These decisions leave the legitimate business of the country in condition of uncertainty. . . . . This condition I have met by a bill which I have introduced in the Senate. It enumerates in plain English every known practice and expedient through which combinations have stifled competition, and prohibits anyone from engaging in them." Senator La Follette in *American Magazine*, July, 1912.

[14] Schuster, The German Civil Code, 12 *Law Quarterly Rev.* 17, 22. As to this notion of authentic interpretation, the maxim *eius est interpretari legem cuius est condere* and the break down of non-judicial interpretation by legislative bodies and royal commissions, see Gény, *Méthode d'interprétation*, §§40–45.

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fect of the French civil code what has proved to be the chief source of its success, namely, that it was not intended to be complete but was intended to be supplemented and explained by various subsidia.[15]

As we know, the historical school overthrew the notion that there could be a complete and final legislative statement of the law. Unhappily the historical jurists went too far in the opposite direction. They assumed that conscious human effort to shape and so to improve the law was futile. They conceived that the law developed through the development of the genius of a people and its gradual expression in legal institutions. Hence they took it to be the duty of the jurist to study the course of this development and to trace its effects in existing legal systems, but in no wise to attempt to interfere therewith, since to essay conscious law-making was to attempt the impossible. For many reasons this theory became very popular in America, and to a large extent it still holds its ground with us, after it has been rejected elsewhere in consequence of the rise of the social philosophical jurists. Thus we have two conflicting theories of the relation of courts to law-making. On the one hand, the older analytical theory, heir in this respect to the eighteenth century, holds that a complete legislative statement of the law upon any subject may be made in advance, and that judicial law-making is abnormal and due only, so far as it may be justified, to defects in the legislative prevision. On the other hand, the historical theory regards such legislative attempts as useless, as attempts to make what cannot be made, and hence looks upon development of the law by juristic speculation and judicial decision as the normal and on the whole the only practicable method. Neither of these theories expresses the whole truth. But the rise of modern legislation and resulting imperative notions of law serve to keep alive the former, while the exigencies of administering the modern codes upon the Continent and experience of applying modern statutes in England and America serve to keep alive the latter, in one form or another, as a tenet of the legal profession. For

[15] *Jurisprudence* (4 ed.), 695.

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instance, it is justly thought a merit of the new German Civil Code that it makes no attempt to be a perfect code in the eighteenth century sense. But there are German expositors of the code who object to its generality and to the margin for development which it leaves and accuse it of being a mere institutional textbook.[16]

In truth the changed attitude toward legislation involved in the break-down of Savigny's historical school, much as it is to be welcomed in that it gives us much needed faith in the efficacy of effort in improvement of the law, is bringing about a return to absolute theories of law-making which in more than one respect is unfortunate. It has been said truly that the activity of legislatures is a fundamental fact of modern law. Demos will legislate, and any theory that seeks to put a check upon this activity will dash in vain against obstinate facts. But it is no less true that much if not most of this legislative activity will prove futile, as most of it has proved in the past, so long as it proceeds upon the assumption that legislators may lay out a full and complete scheme in advance, which will suffice for all controversies, so long as it assumes that the general principles of the law and the rules and doctrines of the legal system into which the legislative enactment is to be fitted and in which it must take its place may be neglected, and so long as it proceeds upon the idea that arbitrary expressions of the sovereign will may be given the quality of law by a prefatory "be it enacted." A lesson of legal history which must be learned both by legislators and by courts is that the law-maker must not be over-ambitious to lay down universal rules.

Since the fundamental idea of law is that of a rule or principle underlying a series of judicial decisions, it is obvious that the power of finding the law, which a tribunal must be allowed to exercise, is to be governed by some sort of system, or we shall have a personal rather than a legal administration of justice. The first conscious attempt to provide such a system is usually

[16] Endemann, *Lehrbuch des bürgerlichen Rechts*, i, §5. See Crome, *System des deutschen bürgerlichen Rechts*, i, §§9, 11; Kohler, *Lehrbuch des bürgerlichen Rechts*, i, §1.

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a complete scheme of legislation. But such schemes are soon outgrown and are never wholly sufficient. Hence three purely juristic methods of systematizing the judicial finding of law have arisen. (1) First we may put what has been called a jurisprudence of conceptions. Certain fundamental conceptions are worked out from traditional legal principles, and the rules for the cause in hand are deduced from these conceptions by a purely logical process. The merit of this method is that it leads to certainty, and whenever, as in the nineteenth century, the demands of business and of property are paramount, this method is the prevailing one. (2) A second method is to take the rules of a traditional system or the sections of a legislative system as premises and to develop these premises in accordance with some theory of the ends to be met or of the relation which they should bear, when applied, to the social conditions of the time being. Just now Continental legal literature is full of suggestions as to the manner in which such a method should be worked out. (3) A third method is the purely empirical one of our Anglo-American law; as Mr. Justice Miller put it, the process of judicial inclusion and exclusion. This method, in appearance crude and unscientific, is none the less justified by its results. It is, in truth, the method of the natural scientist, of the physician and of the engineer, the method of trial-hypothesis and confirmation. The tentative results of *a priori* reasoning are corrected continually by experience. A cautious advance is made at some point. If just results follow, the advance goes forward and in time a rule is developed. If the results are not just, a new line is taken, and so on until the best line is discovered. With all its defects, this method has stood the test of use better than any other. Speaking of this method and of its results in English law, Kohler, who must be pronounced the leader among modern jurists says: "Their science does not go beyond the few necessary beginnings, yet their administration of law far surpasses ours."[17]

If judicial finding of law cannot be obviated by any complete scheme of legislation and may be systematized sufficiently by

[17] Geleitwort to Rogge, *Methodologische Vorstudien zu einer Kritik des Rechts*, iii.

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known juristic methods, it would seem that legislation ought to seek chiefly to provide new and better premises from which courts may proceed rather than to tie the courts down rigidly by a mass of rules. This providing of new and better premises is a possible task and a needed one in all periods of transition. The slow growth of the law by judicial inclusion and exclusion and discovery of the sound rule at the expense of many litigants becomes intolerable in such periods. At many points a more rapid adjustment of the legal system to the needs of the community becomes imperative. Moreover, it happens too often in our Anglo-American case law that through over-ambition of our courts to lay down universal rules our empirical method is replaced in many portions of the legal system by a jurisprudence of conceptions. In such cases, new premises may be required because society cannot await the gradual shifting process which would otherwise bring about a readjustment of the law. But two points are to be observed in this connection.

In the first place, the legislator must bear in mind that his enactment will not stand alone. It must take its place in and become a part of an entire legal system. Hence he must not neglect the relation which his statute will bear to the general body of the law. Rules cannot stand alone in a legal system. So long as human foresight is finite and the variety of human actions infinite, legal reason must be the measure of decision of a great part of the causes that come before courts. This legal reason, exercised in one of the three ways we have considered, postulates a system of rules or principles. Disturbance of this system produces corresponding disturbance of the course of legal reasoning, and sooner or later the disturbing element yields to the general system or else the system gives way thereto. In any event, nothing has so profound an effect upon the practical workings of an enactment as its relation to the legal system into which it is to be set and the mode in which its adjustment thereto has been studied and provided for. This is a matter of much more moment than provision for every detail of application that may be foreseen.

The second point to observe is that this legitimate function

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of judicial adjustment of legislation to its surroundings in the legal system is liable to abuse and has been abused in American law in the immediate past. The old law and the new element ought to be and in the end must be made to accord in a legal system. But this does not mean that the new element is to be judged with suspicion, to be held down rigidly to the mere letter of its provisions, and to be distorted by the reading into it of all the dogmas of the old law not inconsistent with its express terms. Unhappily a tendency of this sort was manifest at one time and has not wholly disappeared. Many things combined to produce such a tendency in nineteenth century American law; the poor quality of much of our state legislation, the analytical theory that law is made and its American form that law is what the courts decide it to be, the relations of judge and legislator in a system in which the judiciary in finding the law may test the validity of statutes by constitutional provisions, the traditions of a legal system which preserved many memories of the Germanic conception of a body of rules beyond reach of human change, and above all a notion of the finality of common-law doctrines derived in part from the Germanic tradition and in part from the later conception of natural law, and fortified by the doctrine of the historical school as to the futility of conscious law-making. Most of the friction between courts and people has been due to this notion of the finality of the law on the one hand and the notion of the finality of legislative power on the other hand.

Let us look at this feature of the relation of courts to legislation more closely.

Settled habits of juristic thought are characteristic of American legal science. Our legal scholarship is chiefly historical. Our professional thinking upon juristic subjects is almost wholly from the point of view of eighteenth century natural law. In either event, it begins and ends substantially in Anglo-American case law. Understand me, I do not for a moment underrate this inheritance of judicial experience in the adjustment of individual relations and disposition of concrete disputes. But I deny that it contains anything beyond such experience in any other sense than all experience may be made to disclose principles of action.

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Yet our jurists of both schools have claimed much more for it. It has been shown more than once that our historical school has given us a natural law upon historical premises. It has made the fundamental conceptions of our traditional case law into fundamental conceptions of all legal science. Thus it has set up a fixed, arbitrary, external standard by which all new situations and new doctrines are to be tested. This school has had an almost uncontested supremacy in our legal scholarship. In the profession at large and in the law schools dominated by the practitioner, substantially the same result in juristic thinking is reached in another way. Except as they have come from the halls of a few of our great law schools, lawyers and judges have been trained to accept the eighteenth century theory of natural law. Until a date comparatively recent, all legal education, whether in school or office, began with the study of Blackstone. Probably all serious office study begins with Blackstone, or some American imitator today. Our latest and most pretentious institutional book lays down the natural-law conception without a hint that any other might be tenable. Some law schools still make Blackstone the first subject of instruction. In others, Blackstone is a subject of examination for admission or of prescribed reading after admission, or there are courses in so-called elementary law, in which texts reproducing the juristic theories of the eighteenth century are the basis of instruction. Thus scholar and lawyer have concurred in what became for a time a thorough-going conviction of the American lawyer, that the doctrines of the common law are part of the universal jural order. When he spoke of law, he thought of these doctrines. He held that constitutions and bills of rights are declaratory of them. He construed statutes into accord with them. Through the power of the courts over unconstitutional law-making, he forced them upon modern social legislation. When to use the words of Bracton and of Coke, he reminded the sovereign people that it ruled under God and the law,[18] he meant that these doctrines which were conceived of as going back of all constitutions and beyond the reach of

[18] *Prohibitions del Roy*, 12 Rep. 63.

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legislation, were to be the measure of state activity. But the fundamental conceptions of Anglo-American case law are by no means those of popular thought today. Being alien in many particulars to current notions of justice and often out of touch with the economic and social thinking of the time, it is not likely that these principles would be acquiesced in wholly even if there were no positive force to counteract them. Such a force there is. For the popular theory of sovereignty, what one may call the classical American political theory, is quite as firmly rooted in the mind of the people as the eighteenth century theory of law is rooted in the mind of the lawyer. The layman is taught this political theory in school, he reads it in the newspapers, he listens to it on the Fourth of July and from the stump and from Chautauqua platforms, and he seldom or never hears it questioned. In consequence, he is as thoroughly sure of it as is the lawyer of his juristic theory. If the lawyer is moved to stigmatize all that does not comport with his doctrine as lawlessness, the people at large are moved to stigmatize all that does not comport with their theory as usurpation.

While the lawyer believes that the principles of law are absolute, eternal, and of universal validity, and that law is found, not made, the people believe no less firmly that it may be made and that they have the power to make it. While to the lawyer the state enforces law because it is law, to the people law is law because the state, reflecting their desires, has so willed. While to the lawyer law is above and beyond all will, to the people it is but a formulation of the general will. Hence it often happens that when the lawyer thinks he is enforcing the law, the people think he is overturning the law. While the lawyer thinks of popular action as subject to legal limitations running back of all constitutions and merely reasserted, not created, thereby, the people think of themselves as the authors of all constitutions and limitations and the final judges of their meaning and effect. This conflict between the lawyer's theory and the politician's theory weakens the force of law. The lawyer's theory often leads him to pay scant attention to legislation or to mold it and warp it to the exigencies of what he regards as the real law. But to those

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who do not share his theory, this appears as a high-handed overriding of law, and the layman, laboring under that impression, is unable to perceive why the lawyer should have a monopoly of that convenient power. On the other hand, the people's theory that law is simply a conscious product of the human will tends to produce arbitrary and ill-considered legislation impossible of satisfactory application to actual controversies.

Hence, I take it, absolute theories, derived from the eighteenth century are the principal source of friction in the relation of courts to legislation. Already the causes of this friction are disappearing, and the resultant difficulties in our legal system are going with them. More careful legislation, proceeding upon better lines and based upon better understanding of what legislation may achieve and should attempt on the one hand and the disappearance on the other hand of the notion of the finality of the common law are now things, if not of the present, certainly of the immediate future. And at the same time the judicial attitude toward legislation has changed visibly. Comparing the reports of the decade from 1880 to 1890 with the reports of today, this change becomes very striking, and a progressive liberalization is manifest as one looks over the decisions from 1890 to 1910. On the whole the movement is going forward more rapidly in the courts than in the legislatures, though some states here are conspicuous exceptions. Not a little modern social legislation, as it is too often enacted, will call for the highest powers of the strongest judges that can be put upon the bench, if we are to make it effective as part of a legal system.

Turning now to interpretation, I must make it clear at the outset that I refer to genuine interpretation, to a genuine ascertainment of the meaning of the legislative provision. This problem, however, is so closely connected with the more difficult one of application of the provision to the cause in hand that to some extent we may look at them together. In the past the whole complex of problems, finding a rule to apply, interpreting the rule when found, and applying it, has been called interpretation. This has led to an impression that *all* interpretation involves the legislative and personal element which belongs only to the finding

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of law. Hence the present popular demand that our courts go to the extreme in spurious interpretation of constitutional provisions while at the same time complaint is made that statutes are nullified by the ordinary process of finding and applying the law. We cannot keep before us too clearly that finding the law —if you will, judicial law-making—is one thing, and true interpretation quite another. In dealing with statutes, since from the nature of the case all causes could not be foreseen, this finding the law or judicial law-making or spurious interpretation is necessary unless we would have the court decide by throwing dice or casting lots. But in constitutional law, where the issue is simply whether the legislative act must yield to the supreme law of the land embodied in a constitutional provision, the question can only be one of genuine interpretation. In the first decision upon the legal tender act, indeed, and in other cases occasionally, implied limitations upon legislative power have been derived by analogy. But such implied limitations, if they exist, must be implied in fact. The idea of a prescriptive constitution, of principles running back of all governments of which bills of rights are but declaratory, is only another phase of the idea of natural law, and in its application means simply the finality of an ideal development of the fundamental principles of the common law. In many of our state courts this idea has been the bane of constitutional decisions upon provisions of the bills of rights. Indeed it has some warrant in the notions of those by whom the bills of rights were framed, and if these were statutory provisions, the position that they might be extended analogically as being declaratory of common law doctrines might be well taken. For our bills of rights represent the eighteenth century desire to lay down philosophical and political and legal charts for all time, proper enough in men who believed they had achieved finality in thought in each connection. The first period of our constitutional law was under the influence of these ideas. But legislatures at that time were willing to be guided by the prescribed charts and would have conformed thereto had there been no such constitutional provisions. The chief complaint during this period was that the courts extended the possibilities of governmental action by in-

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terpretation; for example, that they allowed the federal government to do much which it was denied the constitution had granted thereto. Later, a period of vigorous legislation upon social subjects began and the complaint changed. Now it is urged that the interpretation of courts is too narrow, that legislatures, state and national, are shorn of the powers that belong to them. What has happened is this. Experience has shown, as judicial experience has always shown, the unwisdom of hard and fast enactment. The eighteenth century political and legal charts have been found unsuitable. We have found that after all a bill of rights was wisely omitted from the original draft of the federal constitution. Such provisions were not needed in their own day, they are not desired in our day. It is true they have been aggravated to some extent by taking them to be declaratory and then reasoning from assumed first principles instead of applying the provisions themselves. But that practice has been disappearing with the wane of the idea of the finality of the common law, and the current reports show that with a few conspicuous exceptions, both federal and state tribunals are definitely rejecting it. Consequently it is a misfortune that at the very time when spurious interpretation is thus losing its only foothold in judicial interpretation of constitutions, there should be a strong public demand for elimination or mitigation of undoubted restrictions by a process of spurious interpretaton.

The fiction involved in calling the judicial process of finding the law by the name of interpretation leads to just such mischiefs. It gives rise to an aversion to straightforward change of any important legal doctrine. The cry is *interpret it.* But such interpretation is spurious. It is legislation. And to interpret an obnoxious rule out of existence rather than to meet it fairly and squarely by legislation is a fruitful source of confusion. Yet the bar are trained to it as an ancient common law doctrine, and it has a great hold upon the public. Hence if the law does not work well, says Bentham, with fine sarcasm, "it is never the law itself that is in the wrong; it is always some wicked interpreter of the law that has corrupted and abused it."[19] Thus an unnec-

[19] *Fragment on Government,* xvii.

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essary strain is imposed upon our judicial system and courts are held for what should be the work of the legislature.

With respect to legislation proper, however, there is much yet to be done in the development of a better system of interpretation and application. Vandereycken finds three stages in the development of judicial interpretation.[20] (1) The literal stage, is one in which the exact words taken literally are made the sole measure. (2) In the logical stage the law is taken to be constituted by the will of the law-giver and respect for this will takes the place of the respect for the formula which governed the preceding period. Most of our common law interpretation belongs to this stage. We conceive of genuine interpretation as an attempt by logical methods to ascertain the will of the author of the law. (3) In the positive stage, the law is regarded not so much as something proceeding from the will of the law-giver as something proceeding from society through him; as being the product of economic and social forces working through him and finding expression in his words. Hence the text and the context is no longer held to be an all-sufficient guide. Nor are the circumstances attending enactment held conclusive. Above all things, it is held, regard must be had to the exigencies of social life, to the social ends to be served, to the effect of the different possible interpretations or applications upon the community to be governed thereby. Kohler, one of its pioneer advocates, has applied this method to the new German code, and his exposition deserves to be quoted. He says:

"Thus far we have overlooked most unfortunately the sociological significance of law-making. While we had come to the conviction that it was not the individual who made history but the totality of peoples, in law-making we recognized as the efficient agency only the person of the law-maker. We overlooked completely that the law-maker is the man of his time, thoroughly saturated with the thoughts of his time, thoroughly filled with the culture that surrounds him, that he works with the views and conceptions which are drawn from his sphere of culture, that he speaks with words that have a century of history behind them

[20] *L'Interprétation juridique*, §§236 ff.

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and whose meanings were fixed by the sociological process of a thousand years of linguistic development, and not through the personality of the individual. The opinion that the will of the law-maker is controlling in construing legislation is only an instance of the unhistorical treatment of the facts of the world's history and should disappear entirely from jurisprudence. Hence the principle: rules of law are not to be interpreted according to the thought and will of the law-maker, but they are to be interpreted sociologically, they are to be interpreted as products of the whole people, whose organ the law-maker has become."[21]

It is significant that the Juristentag in Germany has already undertaken legal-sociological inquiries with respect to the social effect of existing laws as the basis of proposed legislation, and that at least one German professor of law has for some time maintained a seminar devoted to studies of this type.[22]

As has been said our classical common law interpretation is of the second type. But something very like sociological interpretation has begun in this country. The briefs submitted by Mr. Brandeis in the case of Muller vs. Oregon and in the case involving the Illinois statute as to hours of labor of women show what may be achieved in this direction. The recent decision of the supreme court of Wisconsin on the workmen's compensation law of that State shows that the good sense of our courts is leading them to develop some such method for themselves.

With respect to interpretation, then, I take it our tasks are (1) to rid ourselves here also of absolute theories, and in particular of the remains of the dogma of finality of the common law, (2) to repeal what ought to be repealed directly and straightforwardly and not store up mischief for the future by demanding indirect repeal by spurious interpretation, (3) above all to develop a sociological method of applying rules and thence if need be of developing new ones by the judicial power of finding the law.

A radically different view is finding favor with many laymen

[21] *Lehrbuch des bürgerlichen Rechts*, i, §38.

[22] Kantorowicz, *Rechtswissenschaft und Soziologie*, 9; Ehrlich, Die Erforschung des lebenden Rechts, *Schmoller's Jahrbuch für Gesetzgebung, Gewaltung und Volkswirthschaft*, xxxv, 129.

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today and has been advocated by professors of government and political science. One of the latter has suggested recently that the power of interpretation should be taken from the courts and given to some executive body in supposed closer touch with the popular will, thus confining the courts to the task of applying the prescribed and interpretated rule. Perhaps enough has been said to show that interpretation apart from decision is impracticable, that it is futile to attempt to separate the deciding function from the interpretating function. But if the mere function of genuine interpretation were to be set off—and of course *spurious* interpretation is law-making and on theoretical grounds is no more proper for an executive commission than for a court and on practical grounds is obviously better exercised concretely than abstractly—how little should we accomplish. Professor Gray has put the matter very well thus: "A fundamental misconception prevails and pervades all the books as to the dealing of the courts with statutes. Interpretation is generally spoken of as if its chief function was to discover what the meaning of the legislature really was. But when the legislature has had a real intention, one way or another on a point, it is not once in a hundred times that any doubt arises as to what its intention was. If that were all that the judge had to do with the statute, interpretation of the statutes, instead of being one of the most difficult of a judge's duties would be extremely easy. The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind had the point been present."[23]

Moreover this very experiment was tried in the code of Frederick the Great and failed utterly as was to be expected. For why should we hope that the executive commission would possess more foresight than the legislature? It is a lesson of all legal

[23] *Nature and Sources of Law*, §370.

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history that the most we may achieve in advance is to lay down a premise or a guiding principle and that the details of application must be the product of judicial experiment and judicial experience.

In a much-quoted case of the fourteenth century, counsel reminded the court of common pleas that if it did not follow its own decisions no one could know what was the law. One of the judges interposed the suggestion that it was the will of the justices. "Nay," corrected the chief justice, "law is reason."[24] In this antithesis between will and reason we have the root of the matter. Mere will, as such, has never been able to maintain itself as law. The complaint of our sovereign peoples that their will is disregarded must be put beside the querulous outburst of James I, "Have I not reason as well as my judges?"[25] the attempt of Frederick the Great to put all interpretation of law in the hands of a royal commission, and the futile attempt of Napoleon's code to prevent the growth of a judge-made law. There is no device whereby the sovereign, whether King Rex or King Demos may put mere will into laws which will suffice for the administration of justice.

To sum up, I think the difficulties involved in the relation of courts to legislation grow out of (1) over-minute law-making which imposes too many hard and fast details upon the courts, (2) crude legislation, which leaves it to courts to work out what the legislature purported to do but did not, (3) absolute theories, both of law and of law-making, which lead both courts and legislatures to attempt too many universal rules, to attempt to stereotype the ideas of the time as law for all time, and have led courts at times to enforce too strongly the doctrines of the traditional system, at the expense of newer principles, and finally (4), by no means least, insufficient attention to the problem of enforcement of rules after they are made. Enforcement and application are the life of law. But we have spent our whole energies upon making rules and have seemed to rely on faith that they would vindicate themselves. More than anything else, atten-

[24] Langbridge's case, Y.B. 19 Ed. III, 375.
[25] *Prohibitions del Roy*, 12 Rep. 63.

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tion to procedure and to the enforcement of rules and their application in practice will relieve the present tension. The Puritan ideal of judicial machines bound down by a multitude of detailed rules has proved inadequate. If legal history may be vouched, the way out lies in strong courts with full powers of doing justice, guided by principles furnished by the law-giver, but not hampered by an infinity of rules, the full effect whereof in action no one can hope to foresee.

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THE DRIFT IN FRENCH POLITICS

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It is generally considered a sort of natural law in the political world for conservatives to govern and for radicals to criticize. In France the opposite is true; there the Left and Right have changed functions, as it is the former, not the latter, which controls the destinies of the nation. This is due primarily to the fact that conservatism in France has neither a habitation nor a name; for the French Revolution, by cutting the jugular vein of the inherited traditions of the country, had established revolution itself as a tradition. So completely has the radical spirit taken possession of the French people that even the reactionaries are dominated by it; for what is a coup d'état if not a revolutionary method of establishing a conservative government? The aristocratic spirit, driven from the body politic, has found refuge in literature; there French tradition still rules, unbroken and unchallenged. Anatole France, Socialist in politics, is yet the hardest and straightest of classicists and a legitimate descendant of the eighteenth century masters. France is unique in harboring at the same time the two master-spirits of aristocracy in arts and letters, and democracy in society and politics.

Revolutionary traditions have made France the protagonist of of political progress. To her history has assigned the rôle of proclaiming the newly-born thought of the world, for it is now accepted as a truism that what France thinks today the world will think tomorrow. And because new ideas always take on strange forms and speak a Quixotic language, France has been decried as fantastic when she has been only original. The history of the nation since the great Revolution has been a constant struggle between ideas and conditions. Republics are organized without republicans; Socialism is passionately advocated in a country still

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largely agricultural; and now Syndicalism gains force in a land of petty industries. The periods of reaction that have so often followed outbursts of revolutionary radicalism were but the natural result of trying to force progress beyond the capacity of digestion by the existing social organism.

If any one in France were to look for political parties in the English or American sense, he would look in vain. Instead, he would find tendencies—royalist, moderate, radical or Socialist that find expression now in this public man, now in that. Around the political leaders form groups or factions which combine and dissolve when it suits their interests. Neither is there such a thing as party organization, and nominations are made by self-chosen committees who call mass meetings for that purpose. Each candidate for office is his own party, writes his own platform and conducts his own campaign. After his election, he seeks out other members of the chamber of deputies who profess the same or similar views, and these constitute a "party" which, in France, is usually formed after, not before the election. A "party" may be born at the opening of the session and die before its close. The elusiveness of French "parties" is proverbial, for they no sooner are than they cease to be; often a deputy will belong to more than one or he will pass serenely from one to another. This lack of political cohesiveness under a parliamentary system, which is essentially a government by parties, should lead to confusion; in a sense it does, as witness the ever-recurring fall of ministries. Nevertheless cabinet changes do not necessarily argue instability, for below the play of factional politics, flow very steady political currents that continue in the same direction, no matter who is prime minister. A cabinet "crisis" often means that some leader of a faction desires a place in the government; the change is made, and the "crisis" is quickly over. The chamber has not been dissolved, and the policies of the succeeding ministry are identically the same as that of its predecessor. Really, the French government has been the most stable of any in Europe, for the same group has been continuously in power for the last twelve years. "What about public opinion?" one might ask. If there be no powerful party organizations, representing the various elements of the

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nation, how is the government made to know the popular will? And yet no man in power has his ear so closely to the ground as the French politician, for the reason that public opinion is easily evoked in a highly sensitive artistic people like the French. A brilliant speech, a fine article, a penetrating book will do the work of party organizations and party platforms. Politics is largely *une affaire de sentiment* which guides the voter and politician alike, sometimes, it is true, to disorder and confusion, but often also to progress and well-being. Only the Socialists have attempted anything like party organization, with local and national committees, clubs and a national platform which all candidates must endorse. Indeed, no one is nominated by the Socialists unless he has been a member of the party for at least three years.

The Dreyfus case marked the beginning of a new era in French political life. Over the innocence or guilt of the hitherto obscure captain of artillery, the forces of royalism and republicanism had engaged in a death grapple. Royalism was struck dead, and the Republic emerged completely triumphant, forever safe from attack or intrigue. The army and the schools were at last made republican, and the church was rendered helpless. Politics had to readjust itself to these changed conditions, and there soon came into existence three great political coalitions, the conservative *Action Libérale Populaire,* the radical *Bloc* and the revolutionary *Parti Socialist Unifié.*

Royalism in France at the present time presents a picture of political barrenness that is sad to contemplate. It is not a conservative party with tangible interests to defend, for then it would be a factor to be reckoned with, which it is certainly not. The truth of the matter is that royalism is a sort of *métier* or profession among the nobility, and merely a habit in certain isolated communities like Brittany, where it is fostered largely through church influences. The burden of royalist complaint is that the parliamentary republic has been corrupt, anti-patriotic and cowardly; and they point to the large number who abstain from voting as a proof of France's disgust with the parliamentary régime. As they do not really hope to see the monarchy re-

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established, they content themselves with furious criticism in the hope of generating a public opinion hostile, not to the republic, but to the republicans. A never-ending theme of the royalist party used to be that the republic had proven a timid form of government, and they instanced France's humiliation at Fashoda by England and the dismissal of Minister Delcassé at the command of Germany, as examples of republican cowardice. But the present renaissance of the French military spirit, and the recent triumph of France over Germany in the Morocco dispute has given a *coup de grâce* to royalist hopes.

Bonapartism in France is not a party but a memory. Here and there small groups struggle desperately to bolster up a rapidly dying tradition. True enough, the empire had been associated with great national glory under Napoleon I, but it had been likewise associated with the deep national humiliation of the Franco-Prussian war; and it is the later memories that count. The imperialists, like the royalists, complain of the cowardliness of the republic in matters of foreign policy, and particularly of its slackness in dealing with the revolutionary forces of socialism and syndicalism. They constantly evoke the principle of "authority" in dealing with the discontented working classes. But both imperialists and royalists are not taken seriously; a fatal thing in France. Even were a "man on horseback" actually to appear again, it is very doubtful whether he would be able to overthrow the republic. A *coup d'état* has become almost as impossible now as a revolution, for the reason that the army is now permeated with the republican spirit, and besides, there is a powerfully organized socialist party to be reckoned with.

Unfortunately for conservatism it was for many years too closely identified with royalism to exercise any potent influence on the politics of the French nation. Conservative interests had to look elsewhere for protection which they found in the moderate republican parties; moreover, the anti-clerical crusade conducted by the government had the effect of distracting attention from the social question, as one could not hunt the priest and capitalist at the same time; at least, not in France. The church prob-

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lem once settled, economic issues immediately sprang to the fore and conservatism was forced to find coherent political expression. This it now does in the *Action Libérale Populaire* which was formed in 1901 by Catholics with the original object of fighting anti-clericalism. This organization is a new and interesting development of French politics, and is destined to exercise great influence in the affairs of the nation. It demands what it calls the three R's: *Représentation proportionelle* or minority representation, *Représentation professionelle* or the organization of a special parliament composed of representatives of economic groups apportioned according to numerical strength to advise the existing Chamber of Deputies, and *Répartition proportionelle* or public support for Catholic schools. In spite of the fact that it frequently coöperates with the royalists, the *Action Libérale Populaire* has definitely recognized the republic and has frankly endorsed the principles of the French Revolution. Because of this, it has drawn into its ranks many of the upper bourgeoisie who formerly were identified with the moderate republican parties. Most significant, however, is the social reform program advocated by this new party; it demands a minimum wage for women employed in home industries, old age pensions, protection for women and children in industry, and workmen's compensation; it is opposed, however, to an income tax. These social legislation planks are inspired by the christian socialism of the Catholic church, and constitute the first effort made in France to win the proletariat from socialism. The *Action* also advocates a revision of the French constitution along the lines of the American constitution with a supreme court to protect the fundamental rights of liberty and property. European conservatives are beginning to regard our constitution with great admiration and to envy Americans their security from attack on the rights of property. Unlike the other French parties, the *Action* is fairly well organized, has local and national committies, and claims a membership of 250,000. At the last election in 1910, it polled about 1,200,000 votes and sent 34 members to the chamber of deputies. In time, it will swallow up the royalists, imperialists and moderate republicans, and so form a powerful conservative party.

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The appearance of the radical *Bloc* marked a great step in the evolution of party politics in France. For the first time something like a real party with a definite program and a tight parliamentary organization appeared in French political life. It was born during the anxious days of the Dreyfus affair when republicans of all shades and hues combined to protect the republic against the monarchists. In spite of ever-changing ministries, in spite of the defection of the socialists, this combination has ruled the country for the last twelve years. Of the various components of the *Bloc* the moderate republicans are the most conservative. They claim to be the only loyal children of the French Revolution which they truly declare was distinctly *propriétiste* and individualistic; hence they are strongly against socialism in any and all forms. Social legislation in favor of the working classes they regard as unwarranted attacks on the sacred rights of property and contrary to the spirit of the great Revolution. An interesting illustration of how a dead radicalism becomes a live conservatism! Most of the moderate republicans come from the upper middle class who have remained loyal to the republic because they were timorous of any sort of change. In France, as elsewhere in Europe, organized efforts have recently been made to protect the middle classes from socialistic legislation. Very cleverly have the capitalists, who are the leaders of this movement, sought to make a common cause with the small shopkeepers for the shrewd reason that large property interests under a democratic government are best sheltered from attack by the voting capacity of the small propertied class. Paul Deschanel, the president of the chamber of deputies and a leading moderate, is also president of the League of Small Proprietors which aims to strengthen the power of this class.

The radicals constitute the core of the *Bloc* and are by far the most numerous faction in the chamber. It was Gambetta, the intellectual father of contemporary French radicalism, that gave this party its war-cry *le cléricalisme, voilà l'ennemi.* For many years the prevalent idea in France has been that the safety of the republic was bound up with the success of the radicals; and to be an uncompromising republican meant the same thing as

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being anti-clerical, because the church was the only institution left in modern France which consistently supported monarchy. Anti-clericalism has proved so winning an issue that the radicals would adopt no other. This has been their strength so far, but will constitute their weakness in the future; for, now that the separation of church and state has left the former disarmed and powerless, anti-clericalism is rapidly becoming a dead issue in French politics.

Towards the extreme left of the *Bloc* sit a small group of men who barely form a party even in the French sense, but a coterie of remarkable men who designate themselves as socialist radicals. Whatever color or significance the *Bloc* now posesses has been given by this body which includes Briand, Millerand, Viviani and Buisson whose task it has been to drag their unwilling allies along the path of social reform. It is the aim of this group to apply the principles of the French Revolution to the social structure, to do for the working classes what 1789 did for the bourgeoisie. The republic will be conservative or not at all was the opinion of Adolphe Thiers, the first president, and the fear of alienating the propertied classes and so bringing on a reaction, has caused the third republic to lag behind the other countries of Europe in matters of social legislation. The appearance of the socialist radicals as well as the growth of the powerful socialist party has convinced the *Bloc* that it has more to fear from the Left than from the Right. Hence during the last few years laws have been enacted designed to ameliorate the condition of the working classes, like old age pensions, workmen's compensation and protection of women and children in industry. The republic of the post-Dreyfus era is governed by a capitalism touched with a social emotion. "The socialist radicals are a bourgeois party with a popular soul," declared Ferdinand Buisson. In addition, this group also advocates government ownership of all means of communication and transportation, likewise of natural monopolies like mines, oil fields, etc.

What had united these three elements was the common aim of protecting the republic against the assaults of the royalists. As long as this was necessary, the cry was "Not an enemy to

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the left!" and even the socialists supported the *Bloc*, though without becoming a part of it. A spirit of camaraderie took possession of all republicans from the aristocratic leader of the moderates, Paul Deschanel, to the stern unbending Marxist, Jules Guesde. But once danger from royalism ceased, fissures immediately began to appear in the hitherto solid *Bloc* which soon began to show signs of progressive disintegration. Urged on by the anti-militarists led by Gustave Hervé, the socialists withdrew their support; then the moderates began to drop away, finally the issue of proportional representation almost completely disrupted the combination. This matter of electoral reform is a vital one in France where the evils of the majority system are intensified; its highly centralized government gives an opportunity for national as well as local patronage to be unscrupulously used in favor of the party in power. It is therefore very difficult to turn out a party once it gets control of the governmental machine. That is one explanation why the French have so often had recourse to revolution. The election districts or *arrondissements* in the expressive phrase of Briand became "stagnant pools" of corruption, but to the party in power they were the living waters that gave continued political life. It is hoped by the most patriotic French statesmen that proportional representation, by enlarging the constituency would shift the emphasis from local to national motives, and thereby become an efficient means in the purification of political life. But the radicals, seeing the likelihood of being ousted from power by the proposd reform, determined to "stand pat" for "majority rule." Under the leadership of Clémenceau, they recently succeeded in defeating the measure in the senate, thereby bringing about the fall of the Briand ministry.

The personality of Aristide Briand has been another disruptive force, as around him have gathered the enmities of many factions and persons. His rise to power at the expense of his former principles and his suppression of the great railway strike by the use of the army have earned him the hatred of the socialists; his policy of "appeasement" in settling the church question angered the fanatical anti-clericals; his social program aroused the dis-

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trust of the moderates; his advocacy of proportional representation drew upon him the fire of the radicals. Yet he was prime minister twice, and is still a factor to be reckoned with in French politics; because M. Briand is that indispensable man whose ability is of the rare type which can express itself both in pregnant speech and constructive legislation.

Perhaps the great underlying reason for the disintegration of the *Bloc* is the fact that it had exhausted the stock of ideas bequeathed by the French Revolution which, now at last, has really ended in France. That great upheaval has been like a power house of ideas which continually sent revolutionary currents throughout the nineteenth century. But now that royalism is routed, the church dis-established and cowed, the army and schools republican, the electorate democratized and the republic safe, the *Bloc*, which brought to fruition this program outlined in '93, has been struck with political sterility. Its ventures into the new field of social politics were marked by excessive timidity, and anxiety lest it alienate the middle classes on whom it relies for support.

Socialism as a really effective force came into existence with the organization in 1905 of the present Unified Socialist Party. Hitherto, French socialists had been more distracted by factionalism than even the bourgeois parties, because they had more ideas about which to quarrel. The futility of French socialists was the common reproach of their well-regimented comrades across the Rhine. At the International Socialist Convention of 1904 in Amsterdam, the various factions were ordered to unite. They obeyed, and in this way was born the *Unifié* which polled a vote of 1,106,000 at the last election, and won 76 seats in the chamber of deputies.

Within the ranks of the party two schools are constantly struggling for dominance. One is the moderate evolutionary school led by Jean Jaurès, who desires to establish the socialist state by coöperating with those forces in French politics that tend in that direction. His policy as well as his personality has made M. Jaurès one of the dominating figures in European politics. To

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be a shrewd politician, fine scholar, superb orator and far-seeing statesman is given to few, but this Frenchman possesses all these qualitites to a remarkable degree. If Jaurès may be described as the Luther of French socialism, Jules Guesde is its Calvin. The political predestination of modern society is so clear to M. Guesde that he cannot tolerate any contraction or modification of his plan of social salvation. Rigid in his adherence to orthodox Marxism, he illustrates in a striking manner the influence of a great idea when lodged in a powerful but narrow mind; for Jules Guesde is a force in French socialist politics and to him is largely due the founding of the present unified party. He has driven heretics like Briand and Millerand out of the fold, and stands guard over the socialist enclosure to prevent the gregarious M. Jaurès from straying into the radical field. The school of M. Guesde is committed to the cataclysmic view of history. *Un grand soir* the capitalist régime will be abolished by a socialist parliament, and the new collectivist state will be ushered into the world. The idea of a complete transformation of society over-night has great fascination for the French mind, for the reason that such a thing did once actually happen when, during the famous night of August 4, 1789, feudal society was abolished by the national assembly.

The irruption of syndicalism has done much to discredit socialism and hinder its growth; first by minimizing the importance of political action, secondly by dividing and distracting the revolutionary energies of the proletariat. Syndicalism regards the chamber of deputies as a futile talky sort of thing that goes through the motions of power without posessing it. It is the aim of the syndicalists to take possession by violence of what they claim is the only real state, the industrial state, and to disregard political institutions entirely. The do-nothing policy of the third republic in matters of social legislation is largely responsible for the growth of this form of desperado socialism. The very violence of the syndicalists attracted wide support for their cause; their ideas were in harmony with the revolutionary traditions of France which animates every class in the land, and to whom the call of

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the barricade is irresistible. This fatal reliance on violent methods in an age of smooth pavements, wide streets and standing armies can lead to only one result—suppression.

On March 16 of this year, there took place the great spring review of the French army at Vincennes. On the same day, there also assembled at Pré-Saint-Gervais a great socialist host of about 120,000 men to protest against militarism in general and the three year service bill in particular. This "red review," as it was called, was a demonstration of what? Of the disinclination of the French proletariat to fight the Germans? Of a possible uprising in case of war? Hardly. No one knew better than the eloquent M. Jaurès, who was the principal orator, that, should war come the French working man would obey the call of nationality just like the bourgeois or aristocrat. Socialists are making the great mistake of allowing their opponents to claim a monopoly of patriotism. The revolutionary Jacobins of '93 played the game in a far better way. They were the ones to be the "patriots" and to denounce the king and aristocrats as "traitors." Nationalism is not an idea but a sentiment like art, religion or music, and cannot be argued away by merely taking thought. Curiously enough, the socialists seem to be the only ones left to champion the essentially middle class notion of the "brotherhood of man" proclaimed so fervently by that *bourgeois enragé,* Robespierre, and now consigned to the limbo of dead idealisms. In our world there exist Germans, Frenchmen, Americans, Englishmen, Italians, Russians, but Man is a fabulous animal.

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THE AUTHORITY OF VATTEL

CHARLES G. FENWICK

There is no more significant commentary on the growth of international law, both in precision and in comprehensiveness, than an estimate of the relative authority of the name of Vattel in the world of international relations a century ago and in that of today. A century ago not even the name of Grotius himself was more potent in its influence upon questions relating to international law than that of Vattel. Vattel's treatise on the law of nations was quoted by judicial tribunals, in speeches before legislative assemblies, and in the decrees and correspondence of executive officials. It was the manual of the student, the reference work of the statesman, and the text from which the political philosopher drew inspiration. Publicists considered it sufficient to cite the authority of Vattel to justify and give conclusiveness and force to statements as to the proper conduct of a state in its international relations.

At the present day the name and treatise of Vattel have both passed into the remoter field of the history of international law. It is safe to say that in no modern controversy over the existence and force of an alleged rule of international law would publicists seek to strengthen the position taken by them by quoting the authority of Vattel. As an exposition of the law of nations at a given period of its growth, the work can, it is true, lose nothing of its value, but in saying that it has thus won its place irrevocably among the classics of international law, we are merely repeating that it has lost its value as a treatise on the law of the present day.[1]

[1] It is true that the authority of Vattel was frequently quoted during the arbitration at The Hague of the Newfoundland fisheries question in the summer of 1910; but in that case the question turned upon the interpretation of treaties entered into nearly a century before, so that the authority of Vattel was, in fact,

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What has brought about this change in the influence once so widely exerted by Vattel's treatise? Is it that the fundamental principles underlying his work have been discredited? Is it that new and more definite rules have come to take the place of those for which he so earnestly contented? Or, is it that both principles and rules as expounded and defined by Vattel have come to be so universally accepted that the mere statement of them is sufficient without further proof or authority?

The uneventful life of Vattel throws but little light upon his mind and character. He was born on August 25, 1714, at Couret, in the province of Neufchâtel, then belonging to Prussia. He studied classics and philosophy at Bâle and Geneva, and became sufficiently interested in the doctrines of Leibnitz to publish a defense of them in 1741. In the same year he went to Berlin to offer his services to Frederick II of Prussia, but failed to obtain the public office he sought. Two years later he went with the same object to Dresden, and finally succeeded in obtaining from the Elector, Augustus III, King of Poland, the position of counsellor of embassy in 1746. He was then sent to Bern as minister of the elector to that republic, and during the twelve years of his residence there he found time to publish several works, the chief of which, and the one upon which his reputation rests, appeared in 1758, under the title *Le Droit Des Gens ou Principes de la Loi Naturelle, Appliqués à la Conduite et aux Affaires des Nations et des Souveraines.* In the same year he was recalled to Dresden and made privy counsellor of the elector. Owing to failing health, he returned to Neufchâtel and died there on December 20, 1767.

The *Droit Des Gens* is not an original composition. The author's purpose, as he himself states in his preface to the work, was to popularize the larger and less accessible work of Wolff

cited as evidencing the state of international law at the period of the treaties, and the probable intent of the parties. Moreover, the writer must confess that only yesterday, at the sessions of the arbitral tribunal constituted by Great Britain and the United States to pass upon general outstanding claims between the two countries, the authority of Vattel was referred to in determining the law with regard to the responsbility of belligerent nations for the destruction of the property of neutral citizens located within the area of belligerent operations.

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entitled *Jus Gentium*, which appeared in 1749. Vattel, however, did not borrow blindly, but followed his own plan and selected only such material as met with his approval, with the result that he felt he could affirm that his own work "differed greatly" from that of Wolff.

After an introduction setting forth the nature and general principles of the law of nations, Vattel divides his treatise into four books. The first of these deals with the internal character and organization of individual states, and, accordingly, belongs rather to the domain of political science and constitutional law than to that of international law. This section of the work is the least important of all, and might be dismissed without further comment, but for the fact that it illustrates strikingly the political theories of the author and shows us the source of the prejudices exhibited in the subsequent sections devoted to the law of nations. In this connection the principles borrowed by Vattel from Wolff will be referred to as if they were Vattel's own.

Vattel's theory of the origin of the state is built upon a conception of the law of nature which may be said to combine elements both of the scholastic theory and of the later social-contract theory. The state is a society of men who have united together to procure by their combined efforts their mutual welfare and advantage. The state is thus composed of persons who are "by nature free and independent, and who before the establishment of civil society lived together in a state of nature.[2] Accordingly, since liberty and independence are theirs by nature, they can only lose those rights by their own consent.[3] So far, the contract theory pure and simple. But later on, Vattel proceeds to show, just as Aquinas or Suarez might have done, that "man's nature is such that he is not sufficient unto himself but necessarily requires the help and intercourse of his fellows, both to preserve his existence and to perfect himself and live as befits a rational animal." From these premises Vattel deduces the existence of a natural society among men, the general law of which is that each member must help the others in so far as they have

[2] *Le Droit Des Gens, Préliminaires*, §4.
[3] *Ibid.*, loc. cit.

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need and in so far as he can do so without neglecting what he owes to himself—"a law which all men must observe in order to live as becomes their nature and to conform to the design of their common Creator."[4] This instinct in man, leading him "necessarily" to unite in society under a law which he "must" observe in order to conform to the design of his Creator, is scarcely consistent with the *voluntary* contractual union of men who are "by nature free and independent."

Vattel's fondness for abstract reasoning leads him to discuss wholly imaginary situations. In considering the abstract proposition that a nation is bound to maintain itself in existence, he makes a complete circle in three short leaps, arguing that since by the social compact, in virtue of which the state is constituted, each individual pledges himself to procure the good of all, and since this obligation can only be fulfilled by the continuance of the social compact, therefore the social compact must be continued. Nevertheless, as the social compact is a voluntary one, the occasion may arise when, for grave reasons, it may be broken; but in general "so long as the body politic exists, the whole nation must endeavor to maintain it in existence"[5]—a conclusion to which no meaning can be attached.

Sovereignty, according to Vattel, resides ultimately in the body politic, which delegates the exercise of it to a definite person or persons in accordance with the constitution of the state. This constitution is adopted by the nation itself and may be changed or set aside by the nation for good reasons. No difficulty arises if the whole nation desires to change the constitution. But suppose that only a part of the people desire the change? In this case "the opinion of the majority must pass without question as that of the entire nation."[6] This statement of democratic principles was certainly in advance of the theories upon which most of the continental governments of that period maintained their power, and it is doubtless to be referred to Vattel's Swiss origin. More democratic still is Vattel's state-

[4] *Ibid.*, §10.
[5] *Ibid.*, bk. i, chap. ii, §16.
[6] *Ibid.*, bk. i, chap. ii, §33.

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ment that those to whom the legislative power is intrusted, whether prince or assembly, or both together, are not competent to change the fundamental laws or constitution of the state unless that authority has been specially conferred upon them.[7] Moreover, if the prince become a tyrant and fail to respect the constitution, the people are justified in withdrawing from their obedience to him.[8] But this fundamental principle of democracy is circumscribed by the warning that such a grave step is to be taken only by the nation as a body, and that it is fraught with danger to the state and must only be ventured upon under stress of grievous evils.[9]

On the subject of religion Vattel, while advocating the principle of liberty of conscience and toleration, feels that he must subject the Church to the secular authority of the State. "Since, he says, "the obligation of working earnestly to know God, to serve Him, and to honor him from the bottom of one's heart is imposed upon man by his very nature, it is impossible that by his engagements towards the body politic man should be excused from that duty or deprived of the liberty which is absolutely necessary to fulfill it. It follows, therefore, that liberty of conscience is a natural right and is inviolable. I feel it a disgrace to mankind that a truth of this nature should require proof."[10] Nevertheless, since a nation is a moral person, it is under the same obligation as individual men to adopt some form of public religion. Over this state religion the sovereign has, by the law of nature itself, full authority. Its ministers are subject to him in all matters, so that if an individual minister feels that he cannot conform to the will of the sovereign in the matter of doctrine and liturgy, "he must resign his position and look upon himself as one having no vocation for it." This call for abject submission on the part of the clergy is followed by a vigorous denunciation of the papacy as an institution claiming to be independent of state control.

[7] *Ibid.*, §34.
[8] *Ibid.*, iv, §51.
[9] *Ibid.*, loc. cit.
[10] *Ibid.*, xii, §128.

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Enough has been said to show that Vattel, while liberal and, for his time, almost radical in his theories of popular rights, was timid and cautious in the practical application of them. The love of liberty common to his Swiss countrymen was strong in him, but he had neither the originality of thought nor the boldness of will to undertake the solution of the grievious political and social evils that were crying for reform during the half-century preceding the French Revolution. Doubtless his long years in the service of Augustus III may be responsible for his tendency to trust overmuch in the virtues proper to sovereigns but not always possessed by them. As an instance of his complete failure to understand actual conditions, it is sufficient to refer to his extravagant praise of the English constitution and government. In describing the duties of a nation, Vattel speaks of England in the following terms: "An admirable constitution puts each citizen in a position to contribute to the welfare of the state, and spreads abroad that spirit of true patriotism which devotes itself zealously to the public good."[11] And in describing the duties of a sovereign he says: "How refreshing it is to see the English king render an account of his chief acts to parliament, assure that representative body of the nation that he has no other object in view than the glory of the state and the welfare of his people, and thank affectionately all those who labor with him for such worthy objects."[12] It is true that such eulogies can be paralleled in Blackstone's *Commentaries*, but one has only to turn a dozen pages of the history of the reform movement in England to find how far they were from describing the real state of things.

As the law of nature is the basis of Vattel's theory of the state, so it forms the basis of his system of international law. Since men are subject to the law of nature, so nations, whose common will is but the result of the united wills of their citizens, and which possess, in consequence, a moral or corporate personality, are likewise subject to the law of nature.[13] Consequently, in

[11] *Ibid.*, ii, §24.
[12] *Ibid.*, ii, §39.
[13] *Ibid.*, Préliminaires, §5.

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order to determine what are the rules of international law, it is merely necessary to apply the law of nature in a proper and scientific way to the affairs and the conduct of nations or of sovereigns.[14] These rules differ from those prescribed by the law of nature to individual men on certain points, owing to the fact that the application of the law of nature to states must be modified somewhat by the peculiar corporate personality which they possess. The result of this purely deductive process of applying the law of nature to nations gives us what Vattel calls the Necessary (or Natural) Law of Nations,—an abstract conception wholly dissociated from the facts of national life.[15] The qualification "necessary" is due to the fact that nations are unconditionally bound to observe the rules contained in it. So far Vattel is merely repeating the fundamental conception upon which the great treatise of Grotius was based.

But the question naturally arises, who is to be the interpreter of this natural and necessary law of nations? Our experience with our fellow man shows us that while all men recognize certain general principles of right and wrong which may be said to constitute the law of nature, at the same time individual men frequently differ as to the application of those principles to specific cases. Here, as between man and man, the state is the arbiter, and enacts civil laws which may in a sense be regarded as the state's interpretation of the law of nature. But since there is no supreme authority capable of deciding, as between nation and nation, upon the application of the natural law to specific cases in which there is a dispute as to its application, it follows that, in so far as nations are concerned, it is necessary to admit some relaxation in the application to nations of the law of nature. The result is that side by side with the necessary law of nations there exists the voluntary law of nations which consists in the modifications which must be admitted in the rigorous application of the law of nature to nations by reason of the fact that there is no acknowledged interpreter of it. In matters where the right or wrong involved stands out clearly, that is to say, in

[14] *Ibid.*, Preface, vi.
[15] *Ibid.*, Préliminaires, §7.

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matters where the application of the law of nature is so direct as to leave no room for doubt, the voluntary law will coincide with the necessary (or natural) law; but in other matters where the inference from the law of nature is not clear, each nation must be allowed its own interpretation of that law, with the result that in some instances the strict precepts of the law of nature may be evaded. Just where the line is to be drawn is a further question and one which discloses the weakness of a system which confounds the positive with the moral law.

The above explantion of the voluntary law of nations goes considerably beyond that of Vattel, whose obscure language on the subject has somewhat puzzled his commentators. As nature has ordained that men should live in society, he says, so she has ordained that nations should form a larger society, of a similar but not identical character. The first general law of this society of nations is that each nation must contribute to the welfare and advancement of other nations in so far as lies within its power. The second general law is that each nation must be allowed to retain that liberty and independence which it holds from nature. It follows, therefore, that "it is for each nation to be the judge of what its conscience demands of it, or what it can or cannot do, or what it is convenient or inconvenient for it to do; and, accordingly, each nation must consider and decide whether it can perform a certain duty towards another without failing in its duty towards itself."[16]

But this right on the part of each nation of personally interpreting its duties does not hold where a nation is under an obligation to another "in a specific matter, for a specific reason which does not depend upon its judgment." "In order to make this clear" (sic), Vattel explains that there are two classes of obligations—those which are binding *in foro interno*, and those which are binding *in foro externo;* only the latter giving rise to corresponding rights on the part of other persons. Now these rights are *perfect* when they carry with them the auxiliary right of constraint; otherwise, thay are *imperfect* and are dependent upon voluntary fulfilment by the other party. It is the principle

[16] *Ibid.*, §13, 14, 15, 16.

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that, in those matters where all *imperfect* rights and obligations are involved force cannot be used to constrain a free state, which gives rise to the rules constituting the voluntary law of nations; and since all nations must recognize that the rules of the voluntary law are essential to the society of nations as it actually exists, it is presumed that nations have given their consent to them.[17]

It is evident that the above distinctions lead us nowhere. The question still remains, what is to determine whether or not a given right carries with it the auxiliary right of constraint and is, therefore, a *perfect* right? Vattel does not answer it, so that the voluntary law of nations remains to the end a deductive and theoretical system.[18]

In addition to the voluntary law of nations there is the conventional law or the law of treaties, which is the result of the various agreements into which nations may enter. But since treaties only bind those who are parties to them, the conventional law of nations is not a universal but a "special" law (droit particulier). Moreover, there are certain rules and practices consecrated by long usage and observed by nations "as a sort of law" which constitute the customary law of nations. The details of this law Vattel says do not belong "to a systematic treatise on the law of nations." In so far as these customs are indifferent in their nature or useful and reasonable, they are binding upon nations which have given their implied consent to them; but if they contain anything which is unjust or unlawful, they are of no force, since nothing can oblige a nation to violate the natural law.[19]

Having distinguished the various species of the law of nations, Vattel proceeds to state the method which he proposes to follow in his treatise. On each subject dealt with he will first lay down

[17] *Ibid.*, §17, 21.

[18] It may be observed that the term "voluntary" is not used by Vattel in the same sense in which it was used by Grotius. The *jus voluntarium* of Grotius received its obligatory force "from the will of all or of many nations;" it consisted in the actual customs in force between nations and the principles generally recognized by them as belonging to the natural law; it was, therefore, a law to be ascertained synthetically from the facts of international life.

[19] *Ibid.*, §24, 25, 26.

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the precepts of the natural or necessary law which are binding upon the conscience of nations, and then show why and to what extent these precepts must be modified by the voluntary law which is binding before the world. As for the conventional and customary law, they only constitute special law and there is no danger of either of these forms being confused with the natural law. Unfortunately, Vattel chooses to speak of the voluntary law as being based upon the "presumed" consent of nations and as, therefore, forming, together with conventional and customary law, a branch of the positive law of nations.[20] This classification has tended to confuse the character of the voluntary law and to suggest that it is of the same empirical character as the conventional and customary law, whereas, in fact, it is entirely distinct from them.[21]

Vattel's method, therefore, is entirely deductive. He intends to lay down what *ought* to be the law if we accept the fundamental principles above set forth; and as these principles embody a moral obligation independently of man's will, Vattel substitutes the word *is* for *ought*. If the practice of nations is frequently quoted in support of a given proposition, it is merely because Vattel regards it as confirming the truth of a rule which he has already established *a priori;* the real test of the lawfulness or unlawfulness of a given act is always its conformity with the law of nature.

[20] *Ibid.*, §27.

[21] In order to make somewhat clearer the various species of the law of nations which constitute Vattel's system, the following table has been prepared, showing the relation between them and the source from which they have been derived.

Law of nations	*Universal*—as deduced from the law of nature.	*Necessary*—the direct application of the law of nature.
		Voluntary—a relaxation in the rigor of the natural law in favor of the liberty of nations.
	Special—as founded upon the actual consent of particular nations.	*Conventional*—embodied in treaties, expressing the explicit consent of nations.
		Customary—embodied in customs, expressing the implied consent of nations.

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It is evident that a system of international law into which the law of nature enters as the chief constituent element cannot stand the test of critical analysis. There are two main objections which have been raised against such a system: first, that it does not distinguish between the rules which are actually in force between nations and those which, as being more consonant with ideal justice, *should* be in force between nations; secondly, that no two persons are agreed as to precisely what rules are to be included in this ideally just code, so that the content of international law must vary with each individual exponent of it. It is true that neither of these objections could fairly have been urged in the time of Grotius, nor doubtless in the time of Vattel. In 1625, when the *De Jure Belli et Pacis* appeared, by far the larger part of the field of international relations was ungoverned by any fixed rules, so that Grotius would have been clearly remiss in the fulfilment of his high purpose had he confined himself merely to determining the existing practice of nations. If he and his followers assume to pronounce authoritatively that certain rules deduced from what they considered the law of nature were binding upon nations independently of their consent, we must rather be grateful to them for their boldness and high-mindedness than critical of their unscientific spirit.

The nineteenth century marks the transition on the part of the great body of English and American writers from the Grotian school, in which the law of nature forms a constitutive element of international law, to the analytic or positive school in which only those rules which are actually observed by nations are regarded as international law. The distinction between *justice* and *law* has now come to be applied to international relations as it has long been understood in the narrower field of municipal relations. Within the sphere of individual states a law is such by reason of its enactment by the duly constituted authorities, irrespective of the justice or injustice of the rule which it enforces. In the same way, international law has now come to be regarded as consisting of the rules actually observed by nations, whether or not those rules embody the principles of justice which have come to be generally recognized among men. Needless to say,

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this does not mean that these principles of justice have ceased to have any application to international relations. It merely means that, being no longer confounded with the facts of international observance, they are rather regarded as the standard to which it is desirable that the practice of nations should conform.

The warm reception accorded to Vattel's work immediately upon its publication is sufficient evidence that the moral foundations upon which he built his treatise and the details of the structure commended themselves to the statesmen of his day. An English translation of the work appeared as early as 1760; and this was followed by numerous subsequent editions in English, the best known being that by Chitty in 1833, as well as by editions in other foreign languages.

In testimony of the authority exercised by Vattel's treatise, one has only to turn to the decisions of the British and American courts on questions involving the rules of international law, and time and again the court will be found citing a paragraph from Vattel in support of its position. In 1799, Sir William Scott, afterwards Lord Stowell, in the case of the *Jonge Margaretha*,[22] in deciding that provisions destined to a port of naval equipment of the enemy might be treated as contraband, said: "I am aware of the favorable positions laid down upon this matter by Wolfius and Vattel, and other writers of the Continent, although Vattel expressly admits that provisions may, under circumstances, be treated as contraband." In the case of the *Maria*,[23] the same judge, in deciding that certain Swedish vessels which sailed under convoy of a Swedish armed ship for the purpose of resisting visitation and search, were subject to condemnation, expressed his estimate of the authority of Vattel in the following terms: "For the proof of this I need only refer to Vattel, one of the most correct and certainly not the least indulgent of modern professors of public law. In book iii, chap. vii. §114, he expresses himself thus: 'On ne peut empecher le transport des effets de contrabande, si l'on ne visite pas les vaisseaux neutres que l'on rencontre en mer. On est donc en droit de les visiter. Quel-

[22] 1 C. Rob., 189.
[23] 1 C. Rob., 340.

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ques nations puissantes ont refusé en différents temps de se soumettre à cette visite, aujourd'hui un vaisseau neutre, qui refuseroit de souffrir la visite, se feroit condamner par cela seul, comme etant de bonne prise.' Vattel is here to be considered not as a lawyer merely delivering an opinion, but as a witness asserting the fact—the fact that such is the existing practice of modern Europe." And subsequently, in the same case, in support of the doctrine that tar, pitch and hemp, destined to an enemy, are liable to seizure as contraband, he confirmed his opinion by observing that "Vattel, the best recent writer upon these matters, explicitly admits, amongst positive contraband, 'les bois et tout ce qui sert à la construction et à l'armament de vaisseaux de guerre.' "

Turning to the decisions of the United States courts, we find as early as 1781 the case of Miller vs. the ship *Resolution*,[24] in which the federal court of appeals had to pass, *inter alia*, upon the question whether the articles of capitulation of the Island of Dominica by Great Britain to France were binding upon the United States as an ally of France, so as to protect the property of British residents in Dominica from capture. The answer of the court begins as follows: "Vattel, a celebrated writer on the law of nations, says, 'When two nations make war a common cause, they act as one body, and the war is called a society of war; they are so clearly and intimately connected that the *jus postliminii* takes place among them, as among fellow subjects.' " The court then proceeds to argue by analogy that agreements between allies with the common enemy must bind each other when they tend to accomplish the objects of the allies.

In 1814, a case was decided in the supreme court of the United States[25] in which the authority of Vattel was claimed by both the majority and the dissenting minority. Chief Justice Marshall, speaking for the majority of the court, held that British property found in the United States on land, at the commencement of hostilities with Great Britain, could not be condemned as enemy property without a legislative act authorizing its confiscation,

[24] 2 Dall, 1.

[25] Brown vs. the United States, 8 Cranch, 110.

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and quoted Vattel in support of his opinion. Justice Story dissented, and after showing that down to 1737 (as evidenced by Bynkershoek), there was no question as to the right of a sovereign to confiscate the goods of the enemy found within his territory at the beginning of war, continued as follows: "Vattel has been supposed to be the most favorable to the new [contrary] doctrine. He certainly does not deny the right to confiscate; and if he may be thought to hesitate in admitting it, nothing more can be gathered from it than that he considers that, in the present times, a relaxation of the rigor of the law has been in practice among the sovereigns of Europe." And further, "Of the character of Vattel as a jurist, I shall not undertake to express an opinion. That he has great merit is conceded; although a learned civilian, Sir James MacIntosh, informs us that he has fallen into great mistakes in important 'practical discussions of public law.'"

Other cases might be cited in which the authority of Vattel was referred to by the courts in determining such diverse questions as the nature and object of war,[26] the boundary of co-riparian states,[27] what constitutes a state,[28] territorial rights over enclosed bays,[29] etc.

As in the decisions of the British and American courts, so in the debates of the congress of the United States and of the British parliament, the name of Vattel will be found appearing in connection with subjects relating to international law. In 1794, during the debate of the house of representatives upon the bill providing for additions to the federal criminal law, in the interest of preserving neutrality in the war between France and Great Britain, Mr. Smith of South Carolina was "surprised" that Mr. Madison could differ from him as to the obligations of the United States under the law of nations "after I had quoted from Vattel and the late secretary of state."[30] In 1797, when the question of

[26] United States vs. *The Active*, 24 Fed. Cases, 755.

[27] Handly's Lessee vs. Anthony, 5 Wheat. 374.

[28] Keith vs. Clark, 97 United States, 454.

[29] *The Alleganean*, Court of Commissioners of *Alabama* Claims, 1885; iv, Moore, Int. Arbitrations, 4333.

[30] Annals of Congress, 3d Congress, 754.

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repealing the limitation contained in the neutrality act of 1794, was before the house, Mr. Swanwick of Pensylvania indulged in the following ironical comment upon the law of nations: "But this law of nations, of which they heard so much, was so flexible a thing, that it was become difficult to know what it was. It seemed to be a law of force, which a strong power always interpreted for a weak one. We, he said, had complained to other nations, that the law of nations had been violated in their conduct towards us; but, knowing us to be weak, they told us we were mistaken—it was no such thing; whereas, if we had been strong enough for it, we should have shown that we understood that law as well as them—so laughable a matter was become this law of nations. If a gentleman could not find his opinions supported by Vattel, he turned to Marten, and if not by him, it would not be difficult to find some other author agree with him in sentiment; indeed, he thought this famous law of nations was become little more than the law of strength." Later on, the same gentleman observed, in language not unfamiliar at the present day, that "For his own part, when he read some of these works, he thought the authors of them had spent their time to very little purpose. He believed we should understand the law of nations very well, if we had twenty ships-of-the-line to back our interpretation of it; but whilst we remained without ships, we should have to receive the law of nations from others."[31]

In 1819, when the foreign enlistment bill was being debated in the British house of commons, Sir James MacIntosh, in opposing the bill, states that "it was expressly laid down by Vattel that a nation did not commit a breach of neutrality by allowing its subjects to enter into the service of one belligerent, and refusing the same permission with respect to another."[32] Sir William Scott, speaking in favor of the bill, quoted approvingly from Vattel's definition of neutrality. In reply, Mr. Scarlett observed that "that writer [Vattel], though gifted with great ingenuity, was not much distingished for the solidity of his conc usions, and this circumstance might be accounted for by consideration

[31] Annals of Congress, 4th Congress, 2nd session, 2230, 2231, 2234.
[32] Hansard's *Parliamentary Debates*, xl, 1094.

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of the circumstances under which he had written his book."[33] The "circumstances" referred to by Mr. Scarlett were apparently the fact that the Swiss nation, of which Vattel was a citizen, was in the habit of hiring its troops to any power which chose to engage them. On the other hand, Mr. Grant admitted that "Vattel was a biased judge," but said that in the present instance Vattel's "judgment was against his bias."[34]

There is an interesting reference to Vattel in the correspondence between Jefferson, as secretary of state, and Genet, the French minister, in 1793. Genet had protested against the action of Jefferson in ordering the detention of a French vessel which had been armed and equipped in the port of New York for the purpose of committing hostilities against Great Britain. Jefferson, in reply, justified the detention, and after showing that it was not in violation of the treaties between the United States and France, continued as follows: "You think, Sir, that this opinion is also contrary to the law of nature and usage of nations. We are of opinion it is dictated by that law and usage; and this had been very materially inquired into before it was adopted as a principle of conduct. But we will not assume the exclusive right of saying what that law and usage is. Let us appeal to enlightened and disinterested judges. None is more so than Vattel." He then quoted at length Vattel's doctrine as to the obligations of neutrality. Genet thereupon lost his temper and retorted with sarcasm: "You oppose to my complaints, to my just reclamations, upon the footing of right, the private or public opinions of the President of the United States; and this aegis not appearing to you sufficient, you bring forth aphorisms of Vattel to justify or excuse infractions committed on positive treaties."[35, 36]

[33] *Ibid.*, 1235.
[34] *Ibid.*, 1246.
[35] American State Papers, i, 154–155.
[36] A second article presenting a critical estimate of the actual rules of international law formulated by Vattel will appear in a later issue of the Journal.

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NOTES ON CURRENT LEGISLATION

EDITED BY HORACE E. FLACK

A New Departure in County Government: California's Experiment with Home Rule Charters: In 1911 the legislature of California (called a reform legislature), aided by a reform state administration, proposed to the voters of California, in the form of constitutional amendments, a number of advanced, if not radical, changes in government. Several of these proposals referred to the initiative and referendum and the recall, and their application to city, county and state legislation and elective officers; some made it easier for cities to adopt freeholders charters for their own government, and to control rates of public service corporations; one provided for woman suffrage; another for the regulation of weights and measures; another aimed to prevent appeals in criminal cases on unimportant technicalities; one provided for employer's liability for injury to his workman; one for establishing a state classified civil service; and another for making more vigorous the state railway commission; but the most advanced and unique of all these propositions was the one by which the people of each county are allowed to elect fifteen freeholders to frame a charter, or constitution which, if adopted by the people and ratified by the legislature, shall become the frame of government for that county. This is home rule, or local self-government in the most advanced form in which it has yet been proposed.

At a special election held on October 10, 1911, all the twenty-three measures submitted by the legislature were ratified by the voters. Thus, today it is possible for the people of any county in California (save the consolidated city and county of San Francisco which already has a freeholders charter) to remove themselves from the control of the general county government act, or acts (for it is modified in some respects by every session of the legislature), and put themselves under their own control by adopting a freeholders charter.

The methods by which this is done are stated in the constitutional amendment and are very like the proceedings by which a city may adopt a freeholders charter. In brief they are as follows: the movement may be initiated by the county board of supervisors (the existing legislative body) passing an ordinance by a three-fifths vote declaring the

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desirability of such action and calling an election of freeholders; or when a petition signed by qualified voters equal to 15 per cent of the total vote cast in that county for governor at the preceding gubernatorial election is presented to the county clerk and properly certified by him, asking for a freeholders election, the board of supervisors must call it and fix the date therefor. The election must occur in not less than twenty nor more than sixty days after the certified petition is presented to the supervisors. The freeholders may be chosen at a general election if one occurs within the dates named; otherwise a special election must be called. Candidates for freeholder must be nominated by petition as are candidates for other county offices. They must not only own real estate, but must have been qualified electors of the county for at least five years immediately preceding. The board consists of fifteen members.

The board is allowed one hundred and twenty days from the time the result of the election is declared in which to frame and submit a charter. The charter signed in duplicate by at least a majority of the freeholders must be filed, one copy with the county clerk and one copy with the recorder. The supervisors then publish the charter at least ten times in a daily newspaper published in the county, or if there be no daily, at least three times in a weekly paper, or if there be no newspaper published in the county, the county clerk shall post copies in three public places in the county and on or near a school house in each school district in the county. The charter is then submitted to the voters in not less than thirty nor more than sixty days after the completion of the publication. If approved by a majority of those voting on the charter it is then submitted to the legislature as soon as possible. The legislature may ratify or reject, but cannot amend. If ratified "such charter shall become the charter of such county and shall become the organic law thereof relative to the matters therein provided, and supersede any existing charter framed under the provisions of this section and all amendments thereof, and shall supersede all laws inconsistent, with such charter relative to the matters provided in such charter."

After such ratification a copy is filed with the secretary of state and another is recorded by the county recorder and then filed with the county clerk. The courts then must take judicial notice of such charter. Either on motion of the supervisors or on a 10 per cent petition of the voters amendments to the charter may be proposed at any time and are treated in the same manner as the original charter.

Among other things the constitutional amendment authorizes the charter to provide:

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1. For a board of supervisors, their election, compensation, terms, etc.

2. For either the election or appointment of other county officers, compensation, terms, etc.

3. For the number of justices of the peace and constables for each judicial township,[1] or for the number of judges or other officers of such inferior courts as the constitution or general law of the State may provide, their compensation, etc.

4. For the powers and duties of boards of supervisors and all other county officers, for their removal, for consolidation and segregation of offices, and for filling vacancies; but powers, and duties of county officers shall be subject to general laws; (e.g., where the State requires uniformity of action).

5. For determining the number, powers, compensation, etc., of all employees of the county.

6. For officers other than those provided now or hereafter by the state constitution.

7. For the formation of road districts and general control of all road work. Upon vote of the people of an incorporated city its streets may be included in such county road districts and taxes levied accordingly.

If at any time the people become dissatisfied with this experiment in home rule, an election may be held and if by a two-thirds majority the voters decide to surrender the charter, they may do so and go back under the general county government act.

As was said before, this amendment to the state constitution was ratified by the voters at an election held October 10, 1911. Up to January 1, 1913, two counties, Los Angeles and San Bernardino, have taken advantage of this provision and have framed and adopted charters.[2] The Los Angeles charter will go into operation the first Monday in June, 1913; that of San Bernardino the first Monday after the first day of January, 1915. Since these are the first counties not only in California, but in the United States, to adopt such government, the plans of control adopted by these counties ought to be of wide interest. The main purpose of this paper, then, will be to give an account of the government provided for themselves by the people of these two counties, one the most populous and the other the largest territorially in the State of California.

[1] There are no true political townships in California—only judicial districts for the justices and the constables.

[2] A movement which may lead to the framing of such a charter has been started in Alameda County.

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In both the charters the board of supervisors, composed of five members chosen by the voters, is made the central factor in the government. Power is centralized in their hands and they are held responsible to the people. The commission form of organization and distribution of duties is followed to some extent. While Los Angeles has held to the regular California method of choosing supervisors by districts and requiring them to be residents and electors of the districts which they represent, San Bernardino, while following the same rule as to nomination and residence, has the candidate chosen by the voters of the entire county. Vacancies are filled by appointment of the governor as required by the constitution. In both counties the term of office is made to begin at noon of the first Monday of December instead of January 1, following the election in November. The Los Angeles charter requires that each supervisor give his entire time to the public service and he is paid $5000 per annum therefor. The San Bernardino charter provides for a salary of $1200 per annum for the supervisors, but the chairman of the board being also county purchasing agent is to receive $2400 per annum.

In the powers and duties of the board of supervisors lie many of the changes which have come about through this new form of government.

In general the boards possess all power now or hereafter granted by general law unless in conflict with the charter, *and in addition such powers as are granted by charter*. It is in this opportunity to grant additional duties and powers to the supervisors that the charters have merit.

Among the most important of such powers is that of appointment. In Los Angeles the voters choose the sheriff, the assessor, and the district attorney. All other officers, county and district, are appointed by the board of supervisors unless otherwise provided for in the charter. In San Bernardino the short ballot idea is carried still farther, for the supervisors are the only officers chosen directly by the people, the supervisors in turn appointing all the others. In the appointment of deputies, assistants, etc., Los Angeles provides that for the most part they shall be selected from those who have qualified under civil service examinations. San Bernardino has not organized civil service examinations but authorizes the supervisors to do so if they see fit. The San Bernardino charter gives county officers the right to nominate their deputies and assistants, but the supervisors may over-ride this power if necessary. No agent, representative, or stockholder of a firm or corporation doing business under a franchise or contract from the county is eligible to hold an appointive office. In San Bernardino county the charter con-

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solidates a number of ordinary county officers with other offices and this saves much expense. For example the district attorney is also public administrator, the sheriff is coroner, the treasurer is tax and license collector, and the clerk is recorder.

The compensation of all persons in the county service, unless fixed by the charter, is determined by the supervisors, but cannot be increased or decreased during the term for which a person has been elected or appointed, except that the Los Angeles charter provides that the salaries of those in the classified civil service may be changed by the written consent of the civil service commissioners. All fees allowed to be collected by law are turned into the public treasury, and thus each officer is not only paid in full by his salary, but the people know how much he is paid.

The board members either directly or through the chairman have general supervision over all officers and departments of the county government. The power of the board in this matter is not new, but these charters have made many provisions which greatly strengthen that power and at the same time so center the responsibility of attending to such duties that it seems probable that better results will be secured. Moreover one or more of the supervisors is to be required to give his full time to the business of the county. In the matter of public highways both charters provide that the board of supervisors shall divide the county into road districts and appoint a county road or highway commissioner with full power and responsibility. The duties of commissioner call for an expert road and bridge engineer. The districts may act as units in building roads and bonding themselves therefor.

In both counties a new officer is provided for, known as a purchasing agent. In Los Angeles he is appointed by the supervisors, but in San Bernardino he is the chairman of the board of supervisors, and holds his position for two years. The creation of this office is an effort to systematize a very important function of the county which is, under existing methods, very loosely exercised, and is the basis of the complaint that county government is wasteful and extravagant. The proposed method of purchasing through one person ought at least to have the merit of following ordinary private business methods and fixing responsibility. The San Bernardino charter says that unless otherwise provided in the charter no other county or district officer can contract for or purchase any furniture, fixtures, tools, supplies, etc., except through the purchasing agent. When possible, supplies are to be purchased in quantities for the various offices of the county. In case of

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emergencies, and the perishable foodstuffs, etc., for institutions, the authorities in charge may purchase under regulations adopted by the supervisors. Itemized reports of all supplies purchased, and delivered to any officer of the county government must be made to the auditor monthly. Inasmuch as all other officers also make similar reports a complete system of checking and accounting can be maintained.

Los Angeles has several officers not generally provided for in county government, one or two of which are entirely new. Among the more important of these are law library trustees, civil service commissioners, live stock inspector, superintendent of charities, county counsel, and public defender. The duties belonging to most of these officers is clearly enough indicated by the name given to the officer. Of those which are newest, however, a little explanation may be necessary. The superintendent of charities is to exercise for the board, and under their direction and regulation, all those functions concerning charity and charity institutions which are ordinarily exercised by county boards, as poor relief, supervision of county hospitals, asylums, etc. The county counsel is intended to relieve the district attorney of that part of his work which makes him the legal adviser or attorney for the county officers. He is to have exclusive "charge and control of all civil actions and proceedings in which the county or any officer thereof, is concerned or is a party." He is also to act as attorney to the public administrator in all official matters.

The most unique of all these officers, however, is the public defender. Upon request of the defendant or by direction of the court, his duty is to defend all persons financially unable to hire an attorney, and who are charged before the courts with contempt, misdemeanor, felony, or other offense. Upon request he shall give advice to any such persons if he is conducting the defense. If he thinks a conviction of such a person might be reversed upon appeal, it is his duty to carry the case to the higher courts. Upon request, if he thinks the claims just, he must prosecute claims for wages if for less than $100. He must defend poor persons in civil suits if he thinks they are being persecuted or unjustly treated. All costs of such work of the public defender are borne by the county.

Two other features of the Los Angeles charter are worthy of mention. The constabulary department consists of the sheriff as head—the sheriff is elected by the people—and the constables of the various judicial townships, *appointed by the sheriff from the civil service lists.* The constables are subject to the orders of the sheriff. By this arrangement it is

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hoped to end the inefficiency and hostility that has been present where the constables were independent of the sheriff and his deputies. The new method centers in the sheriff all responsibility for order and the enforcement of law in all divisions of the county.

The other feature is the attempt to establish the merit system or a classified civil service in all branches of the county government. The merit system in county government is not entirely new, but a few of the methods adopted to make it effective are worthy of attention. At the head of this work is the civil service commission of three members, appointed for a term of six years by the board of supervisors. It will be noted that the term of office here is longer than that of supervisor (four years) hence no board of supervisors after the first can appoint an entire civil service commission. It is true that the supervisors may by a four-fifths vote remove a commissioner, but only after written charges have been filed and a public hearing given. Furthermore no two commissioners may be of the same party. The commissioner can not hold any other salaried county office, or have been within one year preceding his appointment, an active executive officer of any political organization. To prevent the supervisors handicapping the commission by failure to apportion funds, the charter makes it mandatory on the board to levy and collect annually a tax of not less than one-half of 1 per cent on all taxable property of the county for the support of the work of the commission. If the amount raised is in excess of the needs of the commission the surplus goes into the general funds of the county. The commissioners are paid $10 per day for each meeting up to five meetings per month. The clerical work is done by the chief examiner and secretary (the same person) of the commission, appointed by them from the classified list.

In either county elective officers may be removed from office by ordinary legal methods, or by the board of supervisors, or by recall. In Los Angeles county the recall may be used on either elective or appointive officers.

Under the heading of labor the Los Angeles charter provides that prisoners may not be compelled to labor without reasonable compensation, and that the net proceeds thereof shall be paid to those dependent upon them. If there are no such dependants the wages shall be accumulated and paid to the prisoner upon his discharge.

From an examination of the foregoing statement it will be clearly evident that the greatest change that is likely to come about in this new experiment is that the heretofore almost complete control of county

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government by the state legislature is replaced by a considerable degree of local self-government, of home rule; that the irresponsibility under legislative control is to be replaced by direct responsibility to the people who elect or appoint the county public servants and pay the expenses of county government. Under such charters it will no longer be possible for the legislature to pass acts creating for a particular county, new county officers with fat salaries or to increase the salary, or the appointive power of some county officer, as is now done at almost every session of the legislature. It will be left to the people of the county or to their responsible agents to determine what officers they want, what duties each shall perform, and what pay he shall receive. Moreover it may help to avoid that absurdity of California county government which has led the legislature to evade the constitutional provision against special legislation for counties by dividing the counties into classes, *one county to each class*, and then passing laws in general form which say they shall apply to all counties of that class, when there is but one county in that class. Such charters will tend to prevent a legislator from one end of the State helping to provide the purely local government of a county at the other end of the State. Of this other county he has no particular knowledge, and in it he has no particular interest. His power to control it then should be limited to those matters which concern the State as a whole, which under these charters are still left to the state legislature. Therefore both home rule and direct responsibility are provided for while at the same time no legitimate authority is taken from the State.

The reform principles of responsibility centered in a few elective officers, the short ballot, the recall, the election of supervisors at large instead of by districts (San Bernardino County), some application of the commission form of government to counties, systematic and responsible service in purchasing county supplies, appointment instead of election of the county school superintendent, classified civil service, systems of publicity, abolition of the fee system of paying officers, are all clearly recognized and applied.

In addition to the recognition of these principles there are several other noteworthy features of the Los Angeles charter. Among these are the county counsel and the public defender. The practical operation of this last officer in particular will be watched with much interest. The appointment and control of constables by the sheriff is an interesting but most promising experiment. The attempt to use the merit system in civil service has tried to strengthen that system where it has hitherto most often failed.

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The fact that these first two charters to be submitted to the people have in them so much of the newer and more progressive demands of those who are studying the problems of government, coupled with the fact that both were adopted by the people at the first trial and by good liberal majorities, shows what is in the people's minds; shows that the spirit of progress and improvement in matters governmental has reached the voters. Freeholders charter government for counties is not the panacea for all the ills of county government; there is no such panacea; but the plans so far adopted certainly promise exceedingly well. It seems probable that the examples of Los Angeles and San Bernardino counties soon will be followed by a number of other California counties, and if the experiment proves successful, as seems probable, it is not too much to hope that it may and probably will follow the example given in the rapid spread of the commission form of government for cities.

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Rats: An act of the general assembly of 1913 of the State of Indiana recognizes the common rat as a public enemy and a common nuisance in the destruction of property and the transmission of disease and provides means for its extermination. The law is similar both in form and phraseology to the California law of 1909 which was designed to prevent the introduction of diseases from incoming sea-faring vessels. It is likewise intended to recognize and popularize the voluntary efforts of the citizens of one or two counties of Indiana where a "rat day" is designated and the exertions of the citizens on those occasions were attended by most gratifying and almost incredible results.

This measure, introduced in the state senate by a member from one of the southern counties, who was speedily dubbed the "Pied Piper of Indiana" is intended to provide for the gradual extermination of rats, with the avowed purpose of preventing the dissemination of contagious and infectious diseases, of preserving the public health and preventing the destruction of crops, grain, food and property, which has amounted in the aggregate to thousands of dollars annually.

The means provided for the destruction and extermination of rats are comprehensive and far-reaching. It is made a misdemeanor, punishable by a fine of from $10 to $100, for any person to maintain any building, water-craft, wood pile or grain stack which is rat infested, and such persons are required to trap, poison or otherwise destroy the rats which have their rendezvous therein. The state board of health is

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authorized to appoint inspectors to promote and carry on the work of destruction and extermination and these inspectors, together with the state and local boards of health are authorized to inspect rat infested premises, remove such parts thereof as may be necessary to the successful prosecution of their work, or to entirely abate such premises when they have become public nuisances. The state and local boards of health are likewise authorized to prescribe appropriate means for the destruction of rats. School officers are required to provide for the illustrative teaching of the dissemination of disease by rats. City, town and county authorities may, in their discretion, appropriate money out of the general funds for the purchase of traps and poison and the compensation of the inspectors. And the governor is authorized to designate one day each year, by an official proclamation, to be designated as "rat day," to be observed throughout the State as a day for the destruction and extermination of rats.

Flies and mosquitoes are mentioned in the same law, but the only provision relative to these pernicious insects relates to the teaching in the public schools of the manner in which diseases may be communicated by them.

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The Canadian Bank Act, 1913: Every ten years the Canadian bank act undergoes revision. Such a revision should have been effected, in 1910, or at the latest, in 1911. But press of other government business precluded a consideration of a new bank act in 1910, and 1911 was reciprocity year. Accordingly the government found it necessary to extend bank charters annually since July 1, 1911, when the last general bank act went out of existence.

Reciprocity spelled the defeat of the Liberal government. It has been necessary, therefore, for the Conservative ministry to prepare bank legislation. The new bank act has been framed by Hon. W. T. White, minister of finance, a man with a sound knowledge of the banking system of his own and other countries.

The purpose of the 1913 bank act is to remedy those defects which had resulted either from changed economic conditions for which the old act had not provided, or from inherent weaknesses which the act of 1901 had shown when put to the test. It is hoped that the new provisions in the bill will give Canada a sound banking system.

First, the act gives larger powers to banks when lending and taking

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security for loans. Previous acts had made it possible for banks to lend money only to those who had a particularly 'good name.' It is true that banks heretofore have been lending to the farmer on pledge of his crop, but such a pledge was not recognized by law. It is now possible for the banks to accept a pledge provided the borrower has some real financial backing. And such a transaction is perfectly legal, and is recognized by the new act.

In the second place, the 1913 bank act, has definite provisions concerning the shortage of currency. The banks have the right to issue note circulation against gold. The old sections of the act which subject excess issue to a tax from September to February are not altered, but in addition to these regulations, each bank is given power, during the entire year, to issue its notes in excess of paid-up capital, such issue being exempt from taxation. A bank must deposit, however, current gold coin or Dominion notes equal to the excess.

Another important section of the new act relates to government inspection. The system of bank branches in all parts of Canada make it impracticable for the government to appoint examiners to inspect them in any satisfactory and thoroughgoing manner. Moreover, government responsibility would doubtless be considerably increased were such a system of bank examination instituted. The new bill aims to overcome these difficulties and at the same time provide for careful inspection of all banks by providing that the shareholders of each bank shall appoint one or more auditors for one year. The powers and duties of the auditor or auditors are (1) to examine the head office and the certified statements and returns from the branches, (2) to sign the annual report of the bank, (3) to examine branches of the bank, (4) to report to the finance minister when it seems necessary.

The old act is further strengthened by provisions limiting the amount which new banks may charge subscribers for expenses incurred when organizing. The act, moreover, requires each director to be the sole owner of the stock by which he qualifies. The old law permitted one director to help a newly elected director by lending him the required amount of stock so that he might qualify. Again, all subordinate officials of a bank are not allowed to vote even if they own stock Finally, the new bill widens the list of articles on which the banks are allowed to take security.

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Ohio Model Charter Law: The constitution of Ohio as amended in September, 1912, provided two methods for securing city charters. The first calls for a commission to draft a charter to be submitted to the electors of the municipality for approval. The second method provides for the passage by the state legislature of general laws for the incorporation and government of cities and villages which shall become operative when they have been submitted to the electors of such cities and villages, and approved by them. It was in accordance with this second provision that the legislature passed the model charters law.

The model charters bill was drafted by a committee of the Ohio Municipal League. It provides three forms of city government, the commission plan, the city manager plan, and the federal plan. The commission plan calls for three commissioners in municipalities having not more than 10,000 inhabitants. Larger cities are to have five commissioners. All the commissioners are to be elected from the municipality at large and shall hold office for four years. The commission is to exercise all powers conferred upon municipalities by the general assembly or the constitution. It must appoint administrative officers, including a clerk, treasurer, auditor, and solicitor, and may at its discretion assign the direction or supervision of municipal departments to individual commissioners. It is to have authority to create, discontinue or consolidate departments or employments. Officers and employees may be removed by a majority vote by the members of the commission. The commission is required to meet in legislative session at least twice each month and in administrative session at least once a week.

Under the city manager plan, there is to be a council varying in size from five to nine members in accordance with the size of the municipality. They are to be elected for terms of four years and the powers conferred upon municipalities by law are to be exercised by this council. The city clerk, treasurer, auditor and solicitor are to be appointed by council and this body has power to create, discontinue or consolidate public offices, and to remove officers and employees upon a majority vote. The council must appoint and fix the salary of a city manager who is to be the administrative head of the municipal government, under the direction and supervision of the council, and who is to hold office at the pleasure of the council. It is the function of the city manager to see that the laws and ordinances are executed, and to appoint officers and employees subject to the provision of civil service, to attend council meetings, recommend measures to them for consideration, keep

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them advised as to the condition of the municipality and its end, and to prepare and submit the annual budget and perform such other duties as council may prescribe.

The federal plan contemplates a council of from five to fifteen members. In municipalities less than 10,000, the councilmen are to be elected at large. In the larger cities, they are to be elected at large or by wards, as the municipality may decide. When the council is chosen at large, their term of office is to be four years, but when the council is elected by wards, their term of office is to be but two years. The executive power is vested in a mayor, elected for a term of four years, and in a director of public service, director of public safety, solicitor, and treasurer appointed by him. The duties of these officers are those which usually pertain to these positions. The mayor without the assignment of reason may remove any departmental head appointed by him, and the heads of departments may remove subordinates subject to the provisions of the civil service law. There is to be a board of control, consisting of the mayor, auditor, and the departmental heads appointed by the mayor. This board must meet at least twice each week and keep a record of its action. The mayor and heads of departments are given seats in council and the mayor is entitled to introduce ordinances and take part in proceedings and deliberations. The departmental heads are entitled to take part in proceedings dealing with their respective departments. None of these officers are entitled to a vote. The mayor is given the power to veto any ordinance or resolution in whole or in part, while a two-thirds vote of the council is required to over-ride his veto.

In each of the plans above described, provision is made for a treasurer, for an auditor to be chosen by the council, for a clerk and for a solicitor. All councilmen must be electors of the municipality. Their salaries are to be fixed by the council. Absence from regular meetings is to be penalized by a fine of 2 per cent of the annual salary, unless the absence is excused by a two-thirds vote of the council. Ten successive absences operate to vacate the seats of councilmen. The annual tax and appropriation ordinances are to be submitted to the council by the mayor, chairman of the commission, or city manager, as the case may be. No warrants for the payment of claims may be issued by the auditor until the claims have been approved by the head of the department under which the indebtedness was incurred. Provision is made for a civil service commission, consisting of three persons to be appointed by the commission in cities under the commission plan, by the council

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under the city manager plan, or by the mayor in cities under the federal plan.

The initiative and referendum, as provided for in general law, is applicable to each of these plans. The recall is to be applicable only in such cities as choose to adopt it. At the time of the adoption of any plan of city government provided in this law, the question of whether the recall shall be incorporated therein shall also be submitted. The recall provides for the removal of any elected officer at any election demanded by 15 per cent of the electors.

Any of the plans provided for in this law may be adopted by a municipality at an election called by 10 per cent of the voters of a municipality. The petition shall specify the form of government to be voted upon, and if the plan of adopting the specified form of government is approved by a majority of electors voting thereon, that plan shall go into effect upon the first day of January following the next regular municipal election. Any municipality which shall have operated for five years under one of the plans provided for by this law may abandon it in favor of another plan at an election called and headed as in the first instance.

Under the home rule provision of the constitution, a number of the cities of Ohio have called charter conventions to frame city charters. The first city in the State to act in this way was Cleveland, which adopted a new charter at an election held on July 1. City charter conventions are also being held in Dayton, Columbus, Akron and Youngstown. Cincinnati will vote July 30 upon the question of holding a charter convention. No cities have as yet taken steps for the adoption of any of the plans provided for in this law. It is contemplated, however, that a number of the smaller cities of the State will choose to elect one of these forms of government rather than one framed by a convention. These are admirable types of city governments to those who prefer securing new charters in this way.

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Tax Legislation, 1913: Most legislatures meet biennially and sessions have been held this year in nearly all of the States. Many of the sessions were prolonged, and the important legislation is usually delayed until the end, so these notes are necessarily incomplete.

While taxation does not seem to have been as much under discussion as in 1911 (the last year when so many sessions were held), some of

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the steps taken are even more significant of the present trend in taxation than those of two years ago.

The most important matters are the passage by two legislatures of constitutional amendments for home rule in taxation; by three others of amendments to get away from the general property tax; and a lower tax rate on buildings in two Pennsylvania cities.

Six legislatures passed tax amendments to their constitutions. In California a home rule amendment was passed giving counties or their subdivisions, the right to exempt any class of property from taxation for county or local purposes respectively; this would not affect taxation for State purposes, although California has now separated its sources of State and local revenue so that there is no direct State tax. This amendment is to be voted on November, 1914. Its purpose is avowedly to permit any locality by vote of the people, to exempt personal property or improvements, or both.

An amendment intended to accomplish the same purpose was submitted by initiative petition last year but lost. That amendment was so broad that it would have permitted any county or locality to establish its own tax system, methods and dates of collection, etc., and was opposed strongly on the ground that it would have led to administrative chaos. The present amendment confines the local option to a selection of property which shall be exempted from local taxation.

The Wisconsin legislature also passd an amendment granting the right of exemption to counties and localities. This, however, will have to be passed by another legislature (1915) before being submitted to the people.

The legislatures of Kansas, Oregon, and North Dakota, have all submitted amendments to their constitutions which will be voted on November, 1914, and which are intended to permit the legislatures to classify property for taxation at different rates or to grant exemptions. The present constitutions of those States require the taxation of all property by uniform rule, or what is called the general property tax.

The legislature of Ohio has submitted an amendment to be voted upon November, 1913, to exempt state and local bonds of Ohio from taxation. A similar amendment to the old constitution was adopted about eight years ago, but in the general revision by constitutional convention last year was stricken out, and bonds thereafter issued were made taxable.

In actual legislation, the most interesting step was taken by Pennsylvania, which has enacted a law providing that in second-class cities

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(Pittsburgh and Scranton) the rate of taxation on buildings shall be reduced 10 per cent every three years, beginning 1914, until by the year 1925 buildings will pay only 50 per cent of the rate upon other property. In Pennsylvania personal property is classified and taxed for state purposes only, and the practical effect of this legislation will be to make the tax on land values twice the rate of the tax on improvements. This measure was advocated on the ground that it would encourage the erection of buildings, diminish congestion of population, and, by increasing the tax burden upon vacant land, increase the available building sites for homes and industry. The successive steps of reduction are taken every third year largely because the real estate assessments are triennial.

This legislation in Pennsylvania is the first positive enactment in the United States which follows the example set twenty years ago by the provinces of northwestern Canada. It may be added that the province of Saskatchewan in February, amended its rural municipality act so that, beginning with next year, all lands outside of cities will be taxed on actual value, exclusive of buildings, improvements or the expenditure of labor or capital thereon, which will be exempt. In these communities there is no personal property tax, so that local revenues will come entirely from the taxation of land values. The new law provides also for a sur-tax of 6½ cents per acre upon large holdings which have only part of their area under cultivation, and this is avowedly designed to discourage the holding of land idle for speculative purposes.

Pennsylvania enacted a tax of 2½ per cent upon the value of anthracite coal mined, one-half to go to the State and one-half to the county. This tax is expected to yield about $4,500,000, and is in addition to local real estate taxes on the coal lands, and the state tax on corporations. As this new tax does not apply to bituminous coal, of which a large tonnage is mined in Pennsylvania, it may be attacked on the ground that the law is not a proper classification as contemplated by the constitution.

Connecticut has revised its inheritance tax law so as to abolish double taxation. This follows the recommendation of the National Tax Association which was first followed by New York in 1911 and Massachusetts in 1912. Connecticut some years ago enacted a reciprocal provision to prevent the double taxation of estates of non-residents, where the State of their residence exempted residents of Connecticut under similar circumstances, so that State has not been so great an offender

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against interstate comity, as a number of others, but the recent amendments put it into the front rank.

Connecticut has enacted a gross earnings tax on telephone and telegraph companies (which replaces specific taxes upon instruments and wires) and upon express and car companies.

Kansas inadvertently abolished its inheritance tax. Both direct and collateral had been taxable and it was intended to continue the latter tax. The entire law, however, was repealed and then the new collateral inheritance tax law failed to pass the senate.

The New York legislature passed an amendment providing for "excess condemnation" which will be voted on in November, 1913. It follows in general the Massachusetts amendment adopted two years ago and limits the property which the legislature can authorize a city to acquire (in addition to that necessary for a public improvement), to an adjacent area sufficient for building lots.

By an amendment to the New York City charter, buildings in course of construction on assessment day (and which have been commenced since the last assessment) are not to be assessed. Heretofore the practice has been to place a value on such buildings as "partially constructed." The change was intended to obviate the practical difficulties of such assessment and also to encourage building.

New Jersey enacted an important administrative law, providing for tax maps throughout the State. Cities and boroughs within two years, and townships within five years, must provide their assessors with adequate maps. The township maps need not be prepared by actual survey of each property but the state board of equalization is authorized to furnish outline maps of roads, etc., from the geological survey, on which property lines shall be drawn in by the assessors from descriptions in deeds or inspection. This plan is much cheaper than a survey and expected to be sufficiently accurate for the rural districts.

Ohio enacted a drastic revision of its administrative system. The elected assessors are abolished. Each county is made an assessment district; if under 65,000 population one assessor, and if over that number, two assessors (one of each party) are to be appointed by the governor for the county. There is no limit to the term, but county assessors are removable by the state tax commission with consent of the governor. County assessors may appoint assistants subject to approval of, and removal by, the tax commission. Each county is to have a board of review of three members appointed by the tax commission for three-year terms.

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The commission and assessors are given power to increase personal property assessments over the return of the taxpayer and without notice to him. This great extension of power has aroused opposition, and petitions asking for a referendum on the law are being circulated.

Massachusetts has enacted an important law relating to municipal indebtedness, proposed by a joint legislative committee on municipal finance which reported this year. The act provides that all bonds hereafter issued by any city or town shall be serial, and taxes shall be levied sufficient to retire a proportionate part of the total indebtedness annually, beginning with the first year. The new law also continues what has hitherto been the practice in Massachusetts, and might well be followed by other States, in limiting the life of bonds according to the purpose to which the money is to be applied. For instance, bonds issued for emergency appropriations, abatement of nuisances, macadam paving, and sidewalks, are limited to five years; for stone or brick paving, ten years; for school houses and municipal buildings and sites, twenty years; for park lands and sewerage disposal, thirty years. Such debts may be authorized only by a vote of two-thirds of the council or other governing body, or of two-thirds of the voters in a town meeting. Boston is excepted from the act.

The same act provides also that within ninety days the council or other governing body of every city (except Boston) shall give a public hearing in regard to establishing a tax limit for that city, and after said hearing may provide by ordinance that the local taxes (exclusive of debt payments) shall not exceed a specified rate. Such a tax limit shall have the force of law until changed by the city council and such change cannot be made within one year and then only after a duly advertised public hearing and by a two-thirds vote of the council.

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Workmen's compensation: Workmen's compensation and employers' liability still continues to be a prolific source of legislation. The laws of Arizona, California, Illinois, Kansas, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, Ohio and Washington have already been analyzed in these columns.[1] Several States have either enacted laws on this subject or amended existing laws during the present year. It will be of interest to know that the compulsory law of the State of Washington was held constitutional by the supreme court of the State

[1] AM. POL. SCI. REV., November, 1911 and May, 1913.

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(65 Wash. 156, 117 Pac. Rep. 1101) and has also been upheld by the United States Supreme Court.

Nevada. The law of Nevada[2] is compulsory and applies to those engaged in certain enumerated industries which are declared to be especially dangerous. The law became effective July 1, 1911, and covers any injury by accident "arising out of and in the course of employment" in the industries enumerated, which disables the employee for more than ten days or which causes his death. The old fellow servant and assumption of risk doctrines are abolished, but if the injured employee is guilty of contributory negligence, the proportion of compensation is to be in proportion to the degree of such negligence. It is further provided that it shall be conclusively presumed that the employee was not guilty of contributory negligence where the violation of any statutory safety regulation contributed to the employee's injury.

Notice of accidents must be given to the employer as soon as practicable and the claim for compensation must be made within six months from the occurrence of the accident causing the injury. Want of notice, however, or any defect or inaccuracy therein shall not be a bar if the employer is not prejudiced as a result thereof or if it was occasioned by mistake or other reasonable cause. The law prescribes the details as to what shall constitute notice, etc.

Compensation is to be paid as follows: For death, a sum equal to three years' wages, but not less than $2000 nor more than $3000, is to be paid to the dependents of deceased employees (if death results from injury within five years). If deceased leaves persons partly dependent on his earnings, 50 per cent of above amount is to be paid, and if there be no dependents, the medical and burial expenses, not exceeding $300. For total disability the employee is to receive 60 per cent of his average weekly wages during such disability, and a proportionate amount for partial disability, but in no case to exceed $3000. There is an additional payment, subject to the same $3000 limit, of 40 per cent of the average weekly earnings for five years for the loss of both eyes, hands or feet, or one foot and one hand, one eye and one foot or hand and 15 per cent of such wages for the loss of one of these members. Provision is made for the examination of the injured employee by a medical practitioner.

In case a dispute arises as to the condition of the workman or the amount of compensation to be paid, the controversy is to be determined by three arbitrators, one chosen by each of the parties and the third by

[2] Laws of 1911, ch. 183.

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the two so chosen. The unanimous decision of the arbitrators is final and binding on both parties, except for the constitutional right of appeal. In all other cases, either party may demand trial in court in the same manner as any other suit. The injured employee may elect to sue at law or to accept the benefits of the act. He may also elect to hold the principal contractor or subcontractor liable for the injury.

New York. In 1910, the State of New York passed two laws on this subject. One of these was elective and applied to all employers of labor, except railroads, while the other was compulsory and applied to certain hazardous industries only. The latter law was held unconstitutional by the New York court of appeals in 1911 (201 N. Y. 171). The elective law[3] is still in force, not having been affected by the decision of the court of appeals. Where the employer and employee agree to accept the compensation plan described in the act, the employee shall have no right of action for personal injury other than provided in said plan, except where the injury is due to the failure of the employer to obey a valid order in regard to safety regulations or by the serious or wilful misconduct of the employer. If any employer refuses to accept the act, he is subject to an increased liability. The increased liability is not so stringent, however, as that imposed by many other States. In regard to the assumption of risk, the old law was modified so as to make it applicable to the risks inherent in the nature of the business after the employer has exercised due care in providing for the safety of his employees and has complied with the laws or regulations affecting his business. For example, it is no longer an assumption of risk that the employee knew of the defect or negligence which caused the injury if the employer also knew of it or could have discovered it by reasonable and proper care, etc.

The act covers all injuries except those due to the serious and wilful misconduct of the employee and those which disable the employee for less than two weeks. Medical attendance is not required during the waiting period of two weeks.

Compensation is provided as follows: For death, a lump sum equal to twelve hundred times the daily earnings of the deceased, not exceeding $3000, to widow or next of kin wholly dependent on his earnings. A proportionate amount is to be paid to those partly dependent. If there be no dependents, the expenses of medical attendance and burial, not exceeding $100, are to be paid. For total disability, there is to be a pay-

[3] Laws of 1910, ch. 352.

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ment of 50 per cent of the average weekly earnings before the accident, but not more than $10 per week nor for a greater period than eight years. For partial disability, there is to be a payment of 50 per cent of the loss of earning capacity, subject to the same limits, as above. The act contains the usual provisions for notice of accident and physical examination. Questions of law or fact arising in regard to the appliion of the plan are to be determined by agreement or arbitration as provided in the code of civil procedure or by an action at law prescribed in the act. Weekly payments under the act are given the same preferential claim as if unpaid wages, nor are they assignable or subject to attachment, levy or execution.

Rhode Island. The compensation law of Rhode Island[4] became effective October 1, 1912. It is elective and applies to all employees except those engaged in domestic service or agriculture. Employers with more than five employees who do not accept the provisions of the act are subject to an increased liability, for the act abolishes the following defenses: (1) That the employee was negligent; (2) That the injury was caused by the negligence of a fellow employee; (3) That the employee assumed the risk of the injury. The employees of any employer who has accepted the act shall be held to have waived their right of action at common law to recover damages for personal injuries, unless they have given written notice to the employer that they claimed such right. In other words, the right to compensatation for injuries as provided for by the act is in lieu of all rights and remedies theretofore existing for such injuries. All injuries are covered except those intentionally inflicted or due to intoxication. There is a waiting period of two weeks during which the employer must furnish reasonable medical and hospital services.

Compensation for injuries is provided as follows: For death, a weekly payment of 50 per cent of the average weekly wages of the deceased, not less than $4 nor more than $10 per week, for a period of three hundred (300) weeks is to be paid to dependents. The act specifies that the wife and children (including adopted and step-children) under eighteen years of age are conclusively presumed to be wholly dependent. A proportionate amount is to be paid to those partly dependent. If there be no dependents, the employer is required to pay the reasonable expenses of the last sickness and burial, not to exceed $200. For total disability, there is a weekly payment of 50 per cent of the average weekly wages,

[4] Laws of 1912, ch. 831.

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not less than $4 nor more than $10 per week, for a period not exceeding five hundred weeks. The loss of both eyes, both hands, both feet, one hand and one foot, injury to the spine resulting in paralysis of the legs or arms, or injury to the skull resulting in imbecility or insanity, is conclusively presumed to result in total disability. For partial disability, the weekly compensation is to be 50 per cent of the loss in earning capacity not exceeding $10 per week, for three hundred weeks.

In addition to the compensation mentioned above certain specified injuries are to be compensated for as follows: For the loss of both hands, both feet, one hand and one foot, both eyes, 50 per cent of the average weekly wages, not less than $4 nor more than $10 per week, for one hundred weeks; for the loss of either one of these members, the same basis of compensation for fifty weeks; for the loss at or above the second joint of two or more fingers or toes, the same basis of compensation for twenty-five weeks and if one phalange, for twelve weeks, The act prescribes the method of determining the average weekly wage or salary.

The act provides that no savings or insurance of the injured employee, independent of the act, shall be considered in determining the amount of compensation. The usual requirements as to notice of accident, physical examination of the injured employee, etc., are to be found in the act. No agreement by an employee, except as provided in article iv of the act, to waive his rights to compensation is valid, nor are any claims for compensation under the act subject to assignment, attachment, or in any way liable for any debts.

An alternative scheme is provided whereby the employer, with the approval of the court, may substitute a private arrangement with his employees for the compensation provided by the act. Such approval can be granted only on condition that the proposed scheme provides as great benefits as those in the act.

No board of arbitrators is provided, so that all controversies as to compensation, etc., must be determined by the courts.

Wisconsin. The compensation law of Wisconsin[5] became effective September 1, 1911, and applies to all public or private employers of labor. It is elective as to private employers but they are subject to an increased liability if they do not accept the act. Public employers are compelled to abide by the provisions of the act, that is, any employee of the State, counties, cities, towns, villages and school districts is entitled to the compensation provided by the act in case of an injury received in the performance of his work, except when the injury is due

[5] Laws of 1911, ch. 50.

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to his own wilful misconduct. The law of Wisconsin, like that of Michigan, is, therefore, somewhat unusual in regard to public employees. The Wisconsin law also goes further by including domestic servants and farm laborers. If the employer fails to accept the act, he cannot use as a defense in any action brought against him for injury that the employee assumed either expressly or impliedly the risk of the hazard or of the lack of ordinary care of a fellow servant.

The employer can accept the act by filing a written statement to that effect with the industrial commission of the State. The employee is deemed to have accepted the act if he has not given written notice to the employer to the contrary, provided, of course, that the employer is subject to the provisions of the act. The Wisconsin law provides for a waiting period of seven days only, a period shorter than is generally the case in such laws. Medical attendance is required for ninety days, a longer period than is usually provided. No payment is made for the first week, unless the disability continues for more than four weeks, in which case it is added to the payment for the fifth week.

The compensation provisions are as follows: For death, the weekly payment to dependents is to equal the weekly earnings of the deceased, the total amount to be four times the average annual earnings. For the purposes of the act, the annual earnings are deemed to be not less than $375 nor more than $750. If there be only partly dependent survivors, the total amounts payable are to be in proportion to the extent of dependency, the weekly payments remaining the same as before. The industrial commission can direct the payment of the above amounts in gross instead of weekly installments. If there be no dependents, the funeral expenses, not exceeding $100, are to be paid. For total disability, there is to be a payment of 65 per cent of the average weekly earnings of the injured employee. If the accident is such as to require the assistance of a nurse after the period of ninety days during which medical attendance is required, the weekly payment is to be increased to 100 per cent of his average weekly earnings computed as described above. For partial disability, the payment is to be 65 per cent of the loss of earning capacity. The aggregate disability compensation is not to exceed four times the average annual earnings, nor is the disability period to exceed fifteen years. There are the usual provisions as to notice of accident, physical examination, etc.

The act created an industrial accident board, which was later superseded by the industrial commission.[6] This commission has very broad

[6] Laws of 1911, ch. 485.

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powers, since all controversies concerning compensation under the act must be submitted to it, and every compromise of any claim is subject to its review and may be set aside, modified or confirmed by it. After final hearings, the commission is required to make and file its findings and award. The findings of fact made by the commission, shall in the absence of fraud, be conclusive. The award is subject to review by the court, which may confirm or set it aside, but the award can be set aside only upon the following grounds: (1) That the commission acted without or in excess of its powers; (2) That the award was procured by fraud; (3) That the findings of fact by the commission do not support the award.

An employer may, with the approval of the industrial commission, relieve himself of the liability to pay compensation to an injured employee by depositing the present value of the unpaid compensation with a trust company designated by the employee (or his dependents in case of death) or by the purchase of an annuity under the same conditions. It may be added that the act has been upheld by the supreme court of Wisconsin in Borgnis vs. Falk (147 Wis. 327).

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Liquor Legislation in Arkansas: Prohibition of the liquor traffic has been a live issue in Arkansas for a number of years. As the law now stands each county votes every two years for and against license. The number of "dry" counties has steadily increased and the total dry vote has increased. In 1910 the total vote for license was 58,947, against license 81,034. Encouraged by their strength in the total vote the prohibitionists sought several times to secure a state wide law or constitutional amendment from the legislature, but always met with defeat. After the adoption of the initiative and referendum in 1910 they initiated a state wide law which was submitted as act No. 2. The vote on this was 69,390 for to 85,358 against.

Defeated but not cast down, the prohibitionists tried the legislature once more. At the session of 1913 nineteen senators introduced a bill to regulate the issuance of license, which was approved February 17. This act makes it unlawful for any court, town or city council to issue a liquor license except when the same is asked for by petition signed by a majority of the adult white inhabitants (including women) living within the incorporated limits of the town where the license is to be used.

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It further provides that the county must have voted "for license" at the last general election on that subject. Also, that the petition, together with all names and addresses on it, must first be published in at least two issues of some newspaper published in the town where the petition was circulated, for at least ten days before the petition is acted upon. Any officer authorized to issue licenses violating the provisions of this act is liable to a fine of from $500 to $1000 and imprisonment in the county jail for from two to twelve months. The act does not repeal any local laws forbidding the sale of liquor, but is cumulative to all anti-liquor laws now in force.

The final section is: "This Act being necessary for the public peace, health, and safety, shall take effect and be in force from and after December 31, 1913." The postponement of the time for going into effect was made in order not to interfere with licenses already issued and to give the liquor dealers time to adjust themselves to the provisions of the act. But the liquor people denied that the emergency clause could be attached to an act the operation of which was postponed nearly a year. They called attention to the omission of the word "immediate," and declared that the postponement was in itself sufficient evidence that it was not necessary for the "immmediate preservation of the public health, peace and safety." A petition for reference was circulated and the necessary number of signatures was secured. The attorney-general was first asked for his opinion as to whether the act was subject to the referendum. That officer stated that he could find no precedent for such a case. Basing his decision on reason and common sense he declared the act not subject to the referendum. The circuit court was then asked for a write of mandamus against the secretary of state to compel him to submit the act, but the court refused to grant it, saying that the attachment of the emergency clause was evidence that the legislature intended to prevent its submission. At this writing the question is pending on appeal before the supreme court.

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The Illinois Legislature: The forty-eighth general assembly of the State of Illinois, which met January 1, 1913, and adjourned June 30, has established a record for the longest continuous legislative session in the State. But the results of the session have not been commensurate with its length. Owing to the absence of a clear party majority in either house, the organization of both houses was delayed. The house of rep-

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resentatives did not elect a speaker for nearly a month; a second month was spent in a protracted deadlock over the election of United States Senators; and many of the house committees were not appointed until nearly three months after the assembly first met. Under these circumstances, and with no coherent control over the legislature throughout the session, it is not surprising that the new legislation of importance is not altogether harmonious; and it is rather a matter of congratulation that as much was accomplished as has been done.

In the absence of any official legislative reference or bill drafting bureau, active assistance in the preparation of bills recommended by the governor was given by several members of the faculty of the University of Illinois. The new house rule giving precedence to administration measures (see this REVIEW, vol. vii, p. 239) was utilized to some extent; but a number of administration measures were not reported from committees and others failed in one or the other house.

Woman Suffrage: One of the most important measures enacted is that granting to women the right to vote for presidential electors and for town, city and village officials. The constitution of Illinois limits the voting privilege for constitutional officers to men; but women had previously been granted the suffrage for school elections and for trustees of the state university. The purpose of the measure passed this year was to extend woman suffrage to all offices created by statute, which is as much as can be done without an amendment to the state constitution. In fact, there are some omissions of statutory offices in the bill, but it covers most of the offices of this class. For state officers, members of the legislature and most county officers the constitutional restrictions limiting voting to men will still apply. The woman suffrage bill was signed by Governor Dunne in the face of objections that specific amendments to the election law may be necessary to make the measure effective; and this point remains to be tested in the courts.

Public Utilities. There was general agreement in favor of legislation for the regulation of public utilities; but a marked difference of opinion as to the methods of regulation. A committee of the senate, appointed at the previous session, had conducted an investigation of the subject, and during the session submitted a majority report in favor of a new state commission, in addition to the existing railroad and warehouse commission, to control other public utilities. A minority report favored a state commission to take over the functions of the railroad commission and to regulate other interurban utilities, but proposed a city commission appointed by the mayor to regulate all public utilities

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within the city of Chicago, and gave other cities over 20,000 population the option of local control of urban utilities or of surrendering this control to the state commission.

Governor Dunne in his inaugural message advocated a state commission to regulate capitalization and accounts of all public utilities, with control over rates and services for interurban utilities, but favored municipal home rule, for the regulation of rates and services of urban utilities, such as street railroads, and light, water and telephone plants within cities.

Bills were introduced, representing each of these ideas—the administration measure being drafted by members of the University of Illinois faculty, in coöperation with Professor E. W. Bemis and others. As a result of various conferences, the administration bill was revised in committee. As reported to the house, it provided for a state commission of five members, to replace the railroad and warehouse commission, to regulate accounts and capitalization of all public utility companies, and to regulate rates and services of all steam railroads and other interurban utility companies; while a separate article provided for municipal regulation of rates and services of urban utilities, with provisions for the surrender of municipal powers to the state commission.

In the house of representatives, the article on local utilities was stricken out, leaving the state commission with full powers over all public utility companies. The senate amended the bill as it came from the house by reinserting the article for municipal control of local utilities aud striking out the provisions for the approval of stock and bond issues by the state commission. The house refused to concur in these amendments; and in the closing hours of the session the senate receded from its amendments.

The bill, without the provisions for municipal regulation of local utilities, was passed by the aid of some of the governor's supporters, with those who had favored the single state commission, but was strongly opposed by many of the members of all parties. While the bill was in the hands of the governor, strong protests were presented from Chicago and some other cities, asking the governor to veto the bill because of the loss of the municipal home rule provisions. The opposition from Chicago was most vigorous, as that city had been granted power to regulate rates of lighting and telephone companies, and had developed a large measure of regulation through the power to grant franchises. The governor signed the bill, as the only method of ensuring adequate regulation of public utilities.

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As enacted, the public utilities law which goes into effect January 1, 1914, follows the main principles of the Wisconsin law; but with some important differences. Instead of supplementing the former railroad law, the new act lays down a uniform system of regulation for all classes of public utility companies; but it exempts all municipal plants, even from the provisions as to reports and accounts. There is, moreover, no provisions for indeterminate franchises; and the existing power of cities to grant franchises remains, subject to the requirement of a certificate of convenience and necessity from the state commission in the case of new undertakings. The authority of the state commission to regulate accounts, capitalization, rates and services is conferred in broad and far reaching terms; and the administrative provisions governing the procedure before the commission and the judicial review of the commission's orders have been worked out with unusual care, although the court review has been somewhat enlarged over the provisions of the original draft.

Conditions in Illinois are in many respects similar to those in New York state; and special arrangements for the metropolitan district in and around Chicago would seem to offer the best method of regulation. How the proposed plan of divided state and municipal control would succeed in the rest of the State is more open to question—especially in view of the fact that public utility companies are rapidly extending their field of operations beyond municipal limits. Even in the case of Chicago, the city limits do not correspond to the operating areas of the utility companies; and the dual system of state and municipal regulation would give rise to many puzzling problems. On the other hand the single state commission will find it necessary to give special attention to the Chicago situation; and it remains to be seen whether it will have any greater measure of success than the municipal authorities.

Another law authorizes municipal ownership and operation of public utilities, on a local referendum, with financial provisions similar to those in the Mueller street railway law of 1903.

Good Roads. Of far reaching significance is the new road law, which definitely inaugurates the policy of state aid for the construction of a state system of good roads. An unpaid state highway commission, with a state engineer and a small staff, has exercised an advisory influence in improving to some extent the character of local road work; but under the extremely decentralized methods of administration no comprehensive highway system was possible. A joint committee of the previous general assembly had made an extensive study of the sit-

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uation, and submitted a bill for a general revision of the road law, proposing radical changes in the system of administration. Opposition to some features led to amendments, mainly to retain the main features of the present local administration in towns and road districts. But provision is made for a salaried state highway commission of three members, with a corps of engineers, and for county superintendents of highways to coöperate with the state commission in the construction of a system of main highways through the State. State aid will be given for such roads up to fifty per cent of the cost of construction; and appropriations amounting to $1,400,000 have been made for the next two years. An optional provision authorizes towns and road districts to substitute a single highway commissioner in place of three.

Appropriations. The aggregate appropriations voted by the general assembly amounted to $38,000,000 for the next two years. The governor disapproved appropriations amounting to $1,130,000, leaving a net total of approximately $37,000,000, about $7,000,000 more than two years ago. The largest appropriations are: omnibus bill, $12,000,000; charitable institutions $10,000,000; university of Illinois, $4,500,000; normal schools, $1,400,000; state officers' salaries, $2,600,000; good roads, $1,400,000; penitentiaries and reformatory $1,400,000; militia and armories $1,000,000.

Other Laws. Several bills were introduced to provide a legislative reference bureau; and one of these became law, placing the bureau under a board consisting of the governor and the chairmen of the house and senate committees on judiciary and appropriations. This board will appoint a secretary and other assistants. This method of administration is a novel one for the management of such a bureau. It brings the bureau into closer official relations with the legislature; but at the same time increases the danger of political influences.

Disclosures of mismanagement in the state fish and game departments led to the passage of a law reorganizing and consolidating these into one department. A commission of four members of each house has been provided to ascertain if more efficient and economical administration may be secured by consolidating some of the numerous state bureaus and offices.

Vetoes. The governor disapproved twenty-three bills, and disapproved items in four appropriation bills. Among the more important bills disapproved (for unconstitutionality or other reasons) were those for park consolidation in Chicago, the women's eight-hour law, amendments to the commission government law for cities and a revised corporation bill.

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Defeated Measures. The list of important measures urged by the governor and given serious consideration but which failed of adoption is longer than that of the important laws passed. First among these may be placed the proposed amendment to the constitution providing for the initiative and referendum. This passed the senate, but lacked one vote of receiving the required two-thirds vote in the house of representatives. A bill establishing a state tax commission in place of the present cumbrous state board of equalization passed the house, but failed in the senate. A corrupt practices bill, reached second reading in each house. Among other measures which failed were bills for a uniform system of county accounts, and for county local option on the sale of liquors.

Towards the end of the session a resolution to submit to popular vote the question of calling a constitutional convention was passed by the senate, but failed to receive the required two-thirds vote in the house. With the number of proposed amendments now urged and the serious restrictions on amending the state constitution, a convention to undertake a general revision of the constitution seems to be needed in the not distant future.

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Public Utilities:[1] The public utility laws of different States have from time to time been described in the REVIEW. Up to the beginning of the legislative sessions of 1913, fourteen States had established commissions. Wisconsin, New York, Maryland, New Jersey, Vermont, Ohio, Washington, California, Nevada, Oregon, Kansas, New Hampshire, Connecticut and Rhode Island had such commissions; Massachusets divided many of the same powers among three commissions and several States gave a part of the same powers to other commissions such as in Oklahoma to the corporation commissions.

The agitation for commissions was particularly strong in Pennsylvania, Indiana, Illinois and West Virginia and in each of these States legislation was expected. The first States to pass such laws this year were Indiana and West Virginia. The new Indiana law was approved March 5 and takes effect May 1. The West Virginia law was approved in February and takes effect ninety days thereafter.

[1]Missouri has created a public service commission, but the law was not received in time for mention in this note.

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The Indiana law establishes a public service commission of five members and takes over the duties heretofore conferred upon the railroad commission. The members of the railroad commission are continued on the new commission until the expiration of their terms. A legal counsel is also provided to be appointed by the governor. The West Virginia law makes a commission of four members with the attorney-general as the legal officer.

In its main features the new Indiana law follows the public utilities act of Wisconsin with some additional features taken from the New York law and from the model bill prepared by the National Civic Federation. It applies to street and interurban railways, telephones, telegraphs, elevators and warehouses, and heat, light, water and power companies. It applies to cities and towns which own such utilities as well as to private companies. The West Virginia law applies to all carriers, including street railways, telegraph and telephone, pipe line, gas and electric lighting, heating or power, water and hydro electric companies.

In conformity to other laws both laws require that all public utilities shall furnish reasonably adequate service at a just and reasonable price but the Indiana law further requires that no charge shall be greater during the life of a grant or franchise than that fixed in such grant or franchise. In the West Virginia law it is expressly stated that no rate shall be fixed for a public service corporation during the first ten years of its existence at a rate which will produce a net income of less than 8 per cent on the cost of construction and equipment.

The Indiana law adopts the compulsory valuation feature of the Wisconsin law requiring all public utilities to be valued. A provision is added, however, which seeks to fix one element in such valuation as the "cost of bringing the property to its then state of efficiency." This particular feature has been attacked on the ground that it might emphasize too strongly the original cost of the utility. The interpretation put upon it by its framers was that it merely made certain the inclusion of certain elements which would be included anyway. The commission are also authorized to accept any physical valuation made by the interstate commerce commission if they see fit. No power is given to the West Virginia commission to value the property of public utilities but they are required to gather information of property to be tabulated for the use of taxing officials.

The Wisconsin depreciation sections as well as the uniform accounting and reporting sections are adopted without material change in

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Indiana. Depreciation accounts must be kept if the commission determines that they can be reasonably required. The commission is required to install uniform accounts and the form of reports is specified. No power is given in West Virginia in regard to depreciation or uniform accounts and reports.

The commission has power in Indiana either on complaint or on its own initiative to investigate any rates or services and make such findings and orders as they may determine upon. As a basis for rate making, the schedules of rates of all utilities must be filed and no charge shall exceed that made on January 1, 1913. Joint rates or service may be fixed and physical connections may be required. The West Virginia commission appears to have power to investigate only on complaint. The public service corporations in West Virginia must file their schedules with the commission but they may change their schedules after thirty days' notice to the commission. In West Virginia an appeal for an injunction lies to the supreme court of appeals or to a judge thereof. The court or judge after a hearing may issue an injunction but may require bond and may impose such conditions as may be deemed advisable. It would appear, therefore, that this court may be the final rate or service fixing authority.

In Indiana an action may be commenced in the circuit or superior courts and an appeal lies to the supreme court on the ground that an order is unjust and unreasonable. New evidence submitted to the court must be referred back to the commission as in Wisconsin for the action of the commission. No injunction may be granted except after notice to the commission and a hearing but there is a weakness in making it possible to drag the commission's representatives all over the State to attend to injunction and other suits in the circuit and superior courts.

Hereafter all franchises in Indiana are to be indeterminate and no franchise can be granted when there is another company doing a like business without the consent of the commission as to the public convenience and necessity of such second public utility. Municipalities may engage in any public utility business without such consent if the public utility with which they would compete is not operating under an indeterminate franchise. Provision is made for surrendering old franchises for indeterminate franchises. The West Virginia commission makes no mention of franchises.

Stock and bond issues are fully regulated in the Indiana law. Provisions of the New York law and of the model bill are combined in what are believed to be complete and adequate provisions. No stock

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or bonds may be issued for a greater amount than is reasonably necessary for the business and then only with the approval of the commission. If stock is sold at a discount the commission must approve, make a record of the transaction and give such publicity as they may deem necessary. Bonds may not be issued for less than 75 per cent of their face value except that bonds already authorized and bearing interest not less than 4 per cent may be issued at not less than 65 per cent.

The purposes for which stock or bonds may be issued are: acquisition of property, the construction, completion, extension or improvement of its facilities, plant or distributing system, or for the improvement of its service or for the refunding of outstanding obligations. No franchise shall be capitalized for more than the amount paid to the municipality for it. No contract for consolidation shall be capitalized nor shall the capitalization of a merger be greater than that of the constituent parts.

Public utilities desiring to issue stocks or bonds must set out a detailed statement of the condition and financial transactions of the company and the purposes of the issue.

No regulation of stock and bond issues is found in the West Virginia law.

The intercorporate relations of public utilities are regulated by the Indiana law. No lease of a franchise or works may be made without the consent of the commission, nor shall any public utility take hereafter more than 10 per cent of the capital stock of a company doing the same or similar business. Provision is made for sale or merging of public utilities doing a like business with the approval of the commission. The West Virginia law is silent on these points.

The Wisconsin provisions relating to the powers of municipalities are adopted in Indiana. The municipalities may determine by contract or ordinance the quality of service and other conditions not in conflict with the act but an appeal lies to the commission. The municipalities may require extensions and additions to any plant of a public utility, and to punish by ordinance any violation of their orders. Any reasonable extension of facilities or equipment of any public utility may be required by the commission if the municipality fails or refuses to grant permission. The West Virginia law gives power of general supervision by the commission but does not mention municipal powers. Discriminations, passes or franks are prohibited in both States. Accidents must be reported and investigated in Indiana. No public utility may hereafter be acquired in Indiana by a foreign person

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or corporation and it is required that every executive and general officer and a majority of the board of directors of any public utility must be residents of the State of Indiana. There are no provisions of like nature in the West Virginia law.

Six States in addition to Indiana and West Virginia, whose laws are described above, enacted public utility laws during the recent sessions. These States are Colorado, Idaho, Illinois, Montana and Maine. The new laws embody most of the features of the laws previously enacted in other States. In all of these States, public utilities are required to give adequate service at reasonable rates and the commission in each State is given full power to enforce the requirement.

Uniform accounts are required by the law or may be required by the commission in all of these States and schedules must be filed and there must be no departures from the schedules; discrimination is prohibited; issues of securities must be for certain purposes and must be approved by the commission; the commission is authorized to value all property of any public utility used or required to be used in its service to the public; purchase, consolidation or merging must be approved by the commission; physical connection may be required whenever public convenience and necessity require it; all accidents endangering life must be investigated, an appeal lies to the courts under the varying procedure of the States. In Maine it is expressly provided that while a question of law is being decided in the courts, no injunction shall issue restraining the operation of an order of the commission.

The Colorado law makes no exception to home rule cities and the question will be fought out either in the courts or by referendum. In Illinois a determined fight was made to include a home rule provision so as to exclude Chicago but it failed.

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Legislative Reference: A brief survey of legislation on the subject of legislative reference work, enacted by or still pending in the legislatures in session this winter, indicates in what directions the work is expanding and shows how several States are meeting the questions involved in its establishment—as a function of a state library, as a department of a state university, or as an independent bureau.

In Vermont, where legislative reference was established in 1910 as a department of the state library and under the control of the state librarian, a radical change has placed the appointment of the legislative reference librarian in the hands of the governor, who also fixes

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his compensation. Supervision of his work which is definitely outlined, and ratification of his employment of assistants are, however, left to the state librarian. But two revisers of statutes, an entire innovation on the former law, who work in the office of and in coöperation with the legislative reference librarian are appointed by the governor, with the confirmation of the senate. They must have legal training and practice and legislative experience; are, by virtue of their office, ineligible to membership in the legislature and receive a fixed compensation of $7.50 a day for time actually spent in the work. From thirty days prior to the opening of the session until its final adjournment, they must be in session, and they may meet on other necessary occasions. No bill can be acted upon by either house unless endorsed by them as to phraseology and consistency with existing statutes and they also, without attempting to influence or alter legislation, assist members and committees in bill drafting. To expedite the introduction of bills, the revisers are required to send out three days after election, to all members-elect of the legislature, blanks for the preparation of bills and a notice requesting that proposed legislation be sent in as soon as possible for review by the revisers. The annual appropriation is $5000.

In Indiana the legislative reference department has been removed from the state library of which it has been a department for six years and placed in an independent position as a state bureau of legislative and administrative reference, under a board consisting of the governor, state librarian, president of Indiana University, president of Purdue University and one additional member whom the governor nominates. This board appoints and fixes the salary of the director of the bureau, who must have training and experience in the principles of government and political science, constitutional and administrative law and the drafting of statute law. Further appointments in the bureau to carry out the different phases of the work, among which bill drafting is expressly included, are left to the director with the approval of the board. The services of the bureau while primarily for the legislature are not limited to that body but are extended to all state offices, boards, commissions and institutions and to municipal offices. Coöperation with educational institutions is emphasized. The bureau is to have charge of all legislative papers, which are to be turned over to the state library ulimately for preservation. The new bureau is to be housed in close proximity to the state library and to work in coöperation with it in any way which will promote the efficiency of either library or bureau. The annual appropriation for the work is $13,500.

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In Ohio, a reënactment of the law which created a legislative reference department in the state library four years ago, leaves the law virtually as it was with the exception of one decided change by which the department is separated from the state library and is placed directly under the supervision of the state board of library commissioners who employ the director and fix his compensation, with the approval of the governor. The director, in turn, with the approval of the board, appoints assistants, draftsmen, etc. The newly organized department begins its work on an appropriation of $10,000.

In California, where the State library without specific authority or appropriation has for some time carried on legislative reference work, three bills touching the subject were introduced at the recent session of the legislature, one proposing the office of legislative counsel, another establishing a legislative reference department in the State library and a third creating an independent bureau of legislative reference and bill drafting. Of these three proposed bills, the first alone was passed and California now has a legislative counsel bureau, under a legislative counsel board of five members, the governor or anyone appointed by him to act for him, two members of different political affiliations chosen by the senate for a term of four years and two members of different political affiliations chosen by the assembly for a term of two years. If either house fails to make its appointments, the governor is authorized to do so and he also fills all vacancies occurring between sessions, such appointees holding their office until the next session convenes. The members of the board receive compensation only for necessary expenses incurred. The selection of the chief of the bureau is to be based wholly upon fitness, including "practical knowledge of the substantive and remedial law of California;" his salary is fixed by the board; he holds his office for four years subject to removal by a two-thirds vote of the legislature, or, between sessions, by a four-fifths vote of the board upon charges made with a public hearing and published findings thereon. Necessary assistants, etc. to carry on the work are furnished by the board which fixes their compensation. The law expressly requires the coöperation of the State library, State officers and departments, the State university and other State educational institutions, in matters of investigation and research. The chief is expected to devote his whole time to the work of the bureau and to be in attendance at all sessions of the legislature, with a permanent office at Sacramento, where all papers of the bureau are filed as public records, except such private papers as are held as confidential, temporarily, on request of the owner, to later become public records on withdrawal of the request for privacy or an

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order of the board or the legislature. The governor, any judge of the supreme, district or superior courts of the State or any committee of the legislature, either house of the legislature, or any member of the leagislature, may have the assistance of the bureau in the matter of drafting or amending bills by submitting in writing a suggestion, setting forth the substance of the provisions required, with the reasons therefor, these suggestions to be permanently filed in the bureau and, in the case of a suggestion from a judge, a duplicate of the suggestion to be filed in the office of the clerk of the court over which he presides. The bureau is also at the service, on request, of the governor, the two houses or any committee in the matter of consideration of any measure before the legislature and is still at the service of the governor as long as any bill is still in his hands for rejection or approval.

A legislative reference bureau was created in New Hampshire as a function of the State library, the work to be performed by the regular force of the State library with $500 of the appropriation for the State library designated to be used in administering the bureau. As originally drawn, the bill provided, in addition, for a legislative reference librarian at a salary of $1500 a year but this provision was defeated.

Several bills were before the general assembly of Illinois. One provided for a legislative reference bureau in connection with the State university. Another, which was passed by the legislature but vetoed by the governor, would have established a joint legislative commission, consisting of the governor, the speaker of the house, the president of the senate, chairman of the appropriation and judiciary committees of both houses and five other members from each house appointed by the governor.

On their own initiative, the state universities of Colorado and Washington have already developed this line of public service and have had bureaus actively at work at Denver and Olympia respectively while their state legislatures were assembled. In another place has the general subject been given attention—in the Governors' messages. Governor Hunt of Arizona and Governor Eberhart of Minnesota advocated the establishment of legislative reference bureaus in their States, the latter stating emphatically that such work would be closely connected with the state university. Governor Baldwin called attention to the opportunities of the already existing office of clerk of bills, urging that his term be for good behavior and that his duties be broadened. Governor Listner of Washington avocated a committee for re-drafting bills.

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CURRENT MUNICIPAL AFFAIRS

ALICE M. HOLDEN

Harvard University

On July 1 the voters of Cleveland passed upon a new city charter presented for their consideration in accordance with the new "home-rule" constitutional arrangements. The charter introduces an innovation at the outset by providing for nomination by petition and election by the preferential system of voting. First, second, and other choices are allowed the voter. A majority is assured to elect by adding the second choices and, if necessary, the other choices, when no candidate has a majority of first-choice votes. The ballot is non-partisan and provision is made for rotation of the names upon it, so that each name in the largest list of candidates for any one office shall appear first on the ballot an equal number of times.

The council is given the character of a city legislative body. Its powers are extensive but confined to the legislative domain. It is composed of twenty-six members elected from the same number of wards now existing. The council elects its own president and clerk. All ordinances, save emergency measures, go into effect from and after forty days from the date of their passage. Emergency measures must be passed by a two-thirds vote and are defined as ordinances or resolutions "for the immediate preservation of the public peace, property, health, or safety, or providing for the usual daily operation of a municipal department in which the emergency is set forth and defined in the preamble thereto." The annual appropriation ordinance, passed by the council, is based upon detailed estimates submitted by the mayor, and careful consideration is assured by provisions for public hearings and publication in the *City Record.* Ample powers are conferred upon the council for the investigation of any city department or official and for the independent audit and examination of the city's accounts. Appeal may be had from the acts of the council by use of the referendum, demanded by ten per cent of the total number of electors who voted at the last preceding municipal election, and the initiative may be brought into play by a petition signed by at least 5,000 voters of the city. The

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initiated measure must be submitted to the council, which may pass it as set forth in the petition or in a different form, or reject it entirely. The committee representing the petitioners may then require the measure to be submitted to the electors either in the original or in the amended form. A majority of the electors voting is sufficient to carry a proposed measure. Ordinances passed as emergency measures may be subjected to the referendum, but are deemed effective until rejected by the voters. Any elected officer of the city may be removed from his office by a successful recall election. The petition for such purpose must be signed by 15,000 electors, if the removal of an officer elected at large is sought, or 600 electors in the case of an officer elected from a ward.

The mayor is the only executive official elected by popular vote. The heads of the executive departments are appointed by him. He stands at the head of the administration and personifies the executive power of the city. He possesses the authority to institute investigations of all departments and officials, and together with the directors of the six departments has a seat in the council with the right to introduce measures and participate in discussion. The departments are those of law, public service, public welfare, public safety, finance, and public utilities. Of these, the creation of a department of public welfare seems most worthy of attention. Included in this department are divisions of health, charities and corrections, recreation, research and publicity, and employment. The elevation of all these functions into divisions of a major department of city government is indicative of the strong modern opinion in favor of the socialization of philanthropic and charitable effort, and constitutes one of the outstanding features of the new charter. The director of public utilities has under his direction only the non-tax-supported public-utility enterprises of the city. The head of each department is given authority to appoint an advisory board of laymen to act under his supervision. This provision calls to mind the *Deputationen* of the German municipalities whereby the best lay advice is made available for the service of the city. The mayor and heads of departments constitute a board of control of which the mayor is *ex-officio* the president. The meetings of this board are public, its votes are formal, and official records of its proceedings are kept.

The civil-service commission of three members is appointed by the mayor for a term of six years and the members may be removed by him for inefficiency, neglect of duty, or malfeasance in office, but charges must be formally preferred and opportunity given the accused to be

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heard in their own defence. The classified service consists of all officers elected by the people; all directors of departments; members of boards or commissions appointed by the mayor, and advisory boards appointed by heads of departments; secretaries to the mayor, heads of departments and boards or commissions; the clerk of the council; and such heads of divisions as the civil-service commission may determine.

As to franchises, the charter provides that in all ordinances for the granting or removal of franchises the city shall have the right to terminate the same and purchase all the property of the public utility. The city may also, alternatively, acquire the property of public-utility companies by condemnation proceedings. However acquired, the price paid by the city shall not include the value of franchises or renewals. In the case of extensions it is provided that the rights in them expire with the original grant or renewal. The final section ensures the control of the council over the distribution of space in, over, or under the streets and the right to require such charges in appliances and methods of operation as the public interest may demand. The sections dealing with improvements and assessments are too detailed to be set forth here. They accord with the best modern opinion upon that subject. Provision is made for preliminary investigation and for final adjustment by a board of revision of assessments which also reports to the council all claims for damages. The council then passes the final assessment ordinance. Interest on assessment bonds is counted as part of the cost of the improvement. No assessment may be made in excess of $33\frac{1}{3}$ per cent of the actual value of the property after the improvement is made, and the city's share of the cost of an improvement may not be less than one-fiftieth of the total. The city in addition assumes the cost of intersections.

The Cleveland charter represents a careful study of the best features of modern municipal government. The charter commission built largely on experience and introduced innovations only where such innovations contributed to the greater simplification of the city government or its more direct responsibility to public opinion. The text has been issued in pamphlet form by the charter commission.[1]

That an enormous disaster may yet have its good effects is again evidenced in the case of the flood at Dayton, O., where an almost complete regeneration in municipal affairs is being planned. The city has

[1] This note was supplied by Mr. F. W. Dickey, of Western Reserve University.

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overwhelmingly voted in favor of the adoption of commission government and the form this is to take is a modification of the Des Moines idea with adaptations from the scheme of Staunton, Va., and Sumter, S. C. In brief, there are to be five commissioners, one of whom is to serve as mayor, with a general manager and city solicitor to be chosen by the commissioners. The general manager may be selected from the entire country. The city solicitor may at any time, under the direction of the general manager, investigate the affairs of any department of the municipal government. Civil-service appointment of municipal employees is to be assured. Not only is reform to be carried out as regards the personnel of city administration, but it is hoped that a new city hall and civic center may be erected. Already more than two millions of dollars have been raised by citizens for flood prevention. In connection with the general-manager plan, it might be noted that the municipality of River Forest, Ill., is now advertising for a general manager, and that this plan seems to be gaining in general favor.

In connection with the Graduate School of Business Administration, Harvard University is to offer a course in the training of secretaries for commercial bodies during the coming academic year. The work is being undertaken at the suggestion of the National Association of Chambers of Commerce and in coöperation with the Boston Chamber. There will be a new special course on secretarial functions in addition to various general courses in business administration and public affairs. As part of this program of study, which will extend over two post-graduate years, a special course will be offered in the Department of Government on Municipal Budget-making and Accounting. A new course on Municipal Sanitation and Hygiene by Prof. G. C. Whipple is also announced at Harvard for next year.

The mayor of Cambridge, Mass., has appointed a charter commission to make a study and report concerning changes needed in the present charter of the city. The commission is composed of eleven members including Prof. W. B. Munro of Harvard University, Stoughton Bell, president of the Cambridge Taxpayers' Association, and W. G. Davis, president of the Board of Trade.

The city planning commission of Calgary, Alberta, Canada, has published a pamphlet presenting the views of Thomas H. Mawson of the University of Liverpool and of Henry Vivian, upon town planning and

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housing. The pamphlet contains many suggestions as to these civic improvements.

New York City is to have a municipal reference library operated by the bureau of municipal investigation and statistics of the department of finance. Already the library has at its service the bureau's collection of books, reports and pamphlets, as well as the historical records of all the old villages and towns which have been consolidated into Greater New York. The reference library will be open for use by the public. Weekly lectures and discussions of vital topics in municipal government are being planned, and city officials and department employees will be asked to deliver these talks. In Dallas, Texas, a similar move is being made in the collection of material for use by city officials and the interested public in connection with the public library. In April the Chicago Public Library took over the control of the municipal reference library in the city hall of that city and will conduct it hereafter as a branch of the public library. This municipal reference library is engaged in collecting, indexing and preserving all data obtainable relative to the operation and government of municipalities, and the material is available to any citizen or body desiring information although it is intended primarily for the city officials.

This year's meetings of the National Municipal League are to be held in Toronto, Canada, during November.

The newly-formed state municipal league of Oregon is to have its headquarters in Eugene, and the University of Oregon will act as a bureau of research for the benefit of all members of the organization. Prof. F. G. Young has been authorized to appoint a commission of seven officials in Oregon towns to take the steps for complete organization.

The newly-formed International Municipal League, which was proposed at the last annual convention of the Union of Canadian Municipalities, has drafted a constitution with a view to completing the preliminary organization. The constitution states the objects of the league as: (1) to facilitate the effective coöperation of its members in the investigation, study, and discussion of municipal problems; (2) to promote an international exchange of information and counsel in regard to plans proposed, methods adopted and results achieved in connection with the management and improvement of modern cities; (3) to secure

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the most advantageous publication of such information as will be most useful to the members of the league and students of municipal affairs; and (4) to further international friendship, harmony, and progress. Membership in the league is open to all national, provincial and state organizations which are in sympathy with its objects and which are approved by its executive committee. The affairs of the League are to be administered by a council and the executive committee. This council is to be made up of one or not more than five delegates from each member of the league, but each member has one vote only. The council, in turn, appoints the executive committee of five persons in whose charge is the appointment and direction of officers and employees, the collection and disbursement of funds, the adoption of by-laws, and, in general, all work of the league. The executive committee, however, may not formulate or express the opinion of the league as an aggregation in regard to any municipal or political question nor may any member be subjected to dues or assessments or committed to any financial enterprise without the written consent of its delegates. Appointments of the executive committee may be cancelled and vacancies filled at any time by the council. The constitution further provides for amendments by a three-fourths vote of the council after notice to all members of the league.

As yet membership in the league is not as universal and international as might be desired, but it is expected that a good many organizations which now have the matter under favorable consideration will shortly vote their coöperation. The members thus far are as follows: National Municipal League of the United States; Union of Canadian Municipalities; Municipal Association of New Zealand; National Association of Local Government Officers, England (conditional); and Association of Municipal Corporations, England. The temporary secretary of the league is Hon. C. R. Woodruff, North American Building, Philadelphia.

A special *Report of Benevolent Institutions in the United States* is being prepared by the bureau of the census in connection with the thirteenth census. The preliminary figures state the total number of such institutions as 5,397 with 380,337 persons in their care. This shows an increase, over the last report (in 1904), of 1346 institutions and 95,975 inmates. The significant facts brought out by the report are the data in regard to the placing out of children in families and the increased interest manifested everywhere in the treatment of tuberculosis. This latter point accounts largely for the increase in the number of dispen-

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saries and somewhat for it in the case of hospitals and sanitoriums. The net number of dispensaries added is 420, and nearly half of these were established in Pennsylvania by the state board of health for the care of tuberculosis. The six States having the largest number of benevolent institutions are New York with 797, Pennsylvania with 692, Massachusetts 359, Illinois 324, Ohio 311, and New Jersey 207. Of these States the greatest increase in number was shown in Pennsylvania (301) and the smallest in Ohio (52). Almost all States in the Union show an increase which indicates that provision is being made not only in the cities but in the rural districts for the care of those who need it.

The New Statesman is the title of a weekly publication recently undertaken in London by Sidney and Beatrice Webb. At present a series of articles is being printed in answer to the question "What is Socialism?" and the seventh paper has as its sub-title "The Expansion of Local Government."

The first application of the new law in California for the recall of the judiciary was made at a special election held in San Francisco on April 22, when a police judge was removed from office by a margin of 815 votes and his successor named. The total vote polled was less than two-thirds of the city's normal vote.

The mayor and some of the departmental heads of the city of Philadelphia, as well as representatives of the City Club, are to take a short course in municipal economics at the University of Wisconsin in the course of the summer. For this purpose a special short course of twenty-four lectures has been arranged to cover every phase of municipal conditions and government.

At a special election held in Tacoma, Wash., a proposal to expend $87,000 in order to provide a municipal car-line was emphatically defeated together with a proposal for a municipal telephone system costing $1,500,000. The defeat of these two proposed undertakings may find explanation in the fact that the municipal water and light plant in Tacoma is being operated at a loss.

The city of Chicago will this year receive, as its share in the net profits of the Chicago City Railway Company and the Chicago Railways Company, in the neighborhood of over two and one-half millions

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of dollars. This will represent fifty-five per cent of the net earnings of these new companies after deducting costs of operation and including an allowance of five per cent on actual investment. It is expected that a dividend of seven per cent will then be paid to the stockholders. This is a noteworthy example of the granting of a franchise on terms of partnership in which the public receives a division of the profits in return for permitting the business to be carried on.

The official list of cities following the commission form of government and using the short ballot is published as corrected to April 1, 1913, in *The Short Ballot Bulletin* for April, 1913, and in the issue of *Equity Series* for April. The official number at that time is given as 246, and the total population of these cities is estimated at 5,484,706. Since that time commission government has been adopted in Portland, Ore.; Jersey City, N. J.; Lawrence, Kan.; and Columbus and Dayton, O., as well as in a number of smaller places. It was rejected by the voters of Charlotte, N. C., Marietta, O., Hoboken, Bayonne, Edgewater and New Brunswick, N. J., and others. Three Canadian cities have also adopted the plan, and Ottawa is to vote on the question next January.

The Los Angeles *Municipal News*, after thirty-two weeks of publication, has gone out of existence, the voters having by referendum decided against its further publication. The city auditor is conducting an investigation into the financial affairs of the *Municipal News* in order to explain the failure of the year's appropriation to cover more than eight months of expenses.

The recent Los Angeles election resulted in the choice of Judge Rose as mayor and the defeat of former City Attorney J. W. Schenk. The outcome has been commonly regarded as a setback for the more aggressive wing of the municipal reform element in southern California; but the situation on the eve of the election was complicated by so many different factors that no broad generalization is warranted. Mr. Schenk fought an uphill battle but would probably have been elected were it not for the antagonisms aroused by some of his chief supporters.

Following the example of the University of Cincinnati, the trustees of Buchtel College have offered formally their entire institution, grounds, buildings and endowments, amounting to about $400,000, to the city of Akron, O., on condition that it be maintained as a municipal college. The college has trebled its attendance during the past years but

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has not sufficiently increased its endowment. As a municipal institution the trustees point out that, with very slight addition to the money now spent for educational purposes by Akron, the college would offer to all qualified students of the city a college education with free tuition; that the college can be made of practical use in the work of the city government; and that it will furnish an excellent basis for a greater municipal university with technical and professional training for the youth of Akron. The college will be known as the College or University of the City of Akron, although if other schools or colleges are added the college of liberal arts is to keep its present name.

Among the recent publications in the field of municipal problems are the following: James Ford, *Coöperation in New England, Urban and Rural* (New York: Survey Associates, 1913. Pp. xxi, 237, $1.50); W. F. Morse, *The Collection and Disposal of Municipal Waste* (New York: The Municipal Journal. $5); S. H. Clay, *City Building* (Lexington: Commercial Club, 1913. Pp. 164. $5); Women's Municipal League of Boston, *Handbook of Opportunities for Vocational Training in Boston.* Ed. by T. C. McCracken. (Boston: 1913. Pp. ix, 301. $1.25); W. Jones, *National and Municipal Finance* (London: P. S. King, 1913. 1 s.); P. D. Leake, *The Use and Misuse of the Sinking Fund* (London: Gee and Company, 1912. Pp. 19); R. A. Glenn and A. D. Dean, *The Law and Practice of Town Planning* (London: Butterworth, 1913); Yves Guyot, *La gestion par l'État et les municipalités* (Paris: Felix Alcan, 1913. Pp. viii, 437. 3.50 fr.); H. Biget, *Le logement de l'ouvrier: étude de la législation des habitations à bon marché en France et à l'étranger* (Paris: Jouve et Cie, 1913. Pp. 500. 5 fr.); G. Cahen, *Le logement dans les villes. La crise parisienne* (Paris: Felix Alcan, 1913. Pp. 292. 5.50 fr.); Richard Passow, *Die gemischt privaten und öffentlichen Unternehmungen auf dem Gebiete der Elektrizitäts- und Gasversorgung und des Strassenbahnwesens* (Jena: Gustav Fischer, 1912. Pp. vi, 220. 6 M.); Sigmund Schott, *Die grosstädtischen Agglomerationen des Deutschen Reichs 1871–1910. Schriften des Verbandes deutscher Stadtestatistiker, 1.* (Breslau: Wilh. Gottl. Korn, 1912. Pp. iv, 130. 3.40 M.); G. H. Conert, *Die sächischen Terraingesellschaften und ihr Einfluss auf die Stadterweiterung* (Leipzig: Duncker u. Humblot, 1913); *The City of London Year Book and Civic Directory* (London: W. H. and L. Collingridge. 5s.).

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The Library of Congress has issued, in May, 1913, a new bibliography in its series. This is the *Select List of References on Commission Government for Cities*. Other pamphlets and reports recently published by various organizations dealing with municipal subjects are as follows: *Select List of References on the Valuation of Public Service Corporations*, compiled by Mary M. Rosemond, legislative reference assistant of the Iowa State Library; *Toronto Waterfront Development, 1912–1920* (with many illustrations), Published by the Toronto Harbor Commissioners; *Report to Committee of Audit*, February, 1913, by Peter White, on "The City of Bridgeport, Conn.: a Study of the Organization and Procedure of each Permanent Board, Commission, Committee and Office;" *Special Report of the Comptroller of St. Louis, transmitting the report of the Bureau for Revision of Accounts and Methods*, submitted on April 15, 1913, to the municipal assembly.

The Quarterly Journal of Economics for February, 1913, contained an article on "Frankfort-on-the-Main: a Study in Prussian Communal Finance," by Anna Youngman. In the February issue of the *Journal of Accountancy* appeared a paper on "Uniform Municipal Accounting for Second Class Cities," by J. G. Majilton, and in the same *Journal*, for March, was "Municipal Cemetery Accounts," by D. C. Eggleston. Two articles on the assessment of real estate, "The Experience of Cleveland and other Cities in the Use of Exact Methods in Assessment of Real Estate," by E. W. Doty, and The Proper Organization of the Assessing Department, together with an Account of Methods Applicable to the Assessment of Real Estate in Cities," by Lawson Purdy, were printed in the *Bulletin* of the Philadelphia City Club for March 4, 1913, *La Réforme Sociale* published, in its issue for February 16, an article entitled "Les services d'interêt collectif et les régies municipales," by L. Dausset, and in the January issue, "La municipalisation des services publics en Italie," by L. Rizzi.

The May, 1913, issue of *The Newarker*, the organ of the Newark Free Public Library, contains carefully compiled tables and statistics (1) for the city of Newark in all its activities, conditions, and departments, and (2) for the twenty-five largest cities of the United States, exclusive of New York, Chicago, and Philadelphia. This last table is divided into four parts. Part I deals with general statistics—population, and its increase during ten years, area, assessed valuation of property, tax rate, gross, net and per capita debt. Part II is concerned with schools.

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In Part III figures are given for the amounts paid by the various cities for different services which the city provides, the mileage of streets and area of parks. Industrial statistics, figures for licenses, arrests for different causes, and the death rate make up Part IV. The data used in these tables were secured from the cities themselves and from various printed sources when not available directly from the city concerned.

During the present year seventeen bills have been introduced in the Massachusetts legislature to change the charter of the city of Boston, and all of these bills have been defeated. A determined opposition to any change in the present charter provisions has been made, not only by a great many public-spirited citizens, but by such organizations as the Boston Finance Commission, the Good Government Association, the city council, the Chamber of Commerce, the United Improvement Association, and others. The press of the city has been practically united in demanding that the charter be undisturbed for the present. For the first time in its whole municipal history the city has been allowed to pass through a three-year period without a single charter change.

According to a study made by the United States bureau of the census concerning the extent of civil service examination in cities of over 30,000 population, the smaller the city the less likely it is to have this mode of examining its candidates for employment as to their fitness for the work. The large cities, as a rule, have adopted comprehensive civil-service regulations. Of the 185 replies to the 193 inquiries sent out to cities, 76 cities report that they do not require any examination as prerequisite to appointment in city departments; 32 cities require examination for certain departments, but not for all; and 77 cities insist upon examination for appointment to all departments.

The efficiency division of the Chicago civil service commission has published a pamphlet containing an analysis of employment and charts showing departmental organizations and distribution of employees in the city of Chicago, and outlining the work done by the division during the years 1909–1912. To one studying the municipal administration of Chicago the large number of charts printed in this pamphlet furnish invaluable aid.

The Chicago City Club has organized a housing exhibition with the following sections: historical types of buildings in Chicago from 1830;

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types of dwellings now being erected; "Darkest Chicago;" idealistic housing in Europe and America; competitive plans for typical quarter section.

The new home of the Boston City Club is now under construction. It will be the largest club house in New England. The club's present quarters will be taken over by the newly-organized Women's City Club.

The fortieth National Conference of Charities and Correction was held in Seattle during the week of July 5–12. Sessions were held on the following subjects: children, distribution and assimilation of immigrants, relation of commercial organizations to social welfare, families and neighborhoods, health and productive power, public supervision and administration, probation, prison and parole, the church and social work, and standards of living and labor. At the close of the First Town Planning and Municipal Organization Congress held at Ghent during the last week of July, there was an International Congress for the Fight against the Deterioration and the Adulteration of Foodstuffs.

On April 1 the newly-established municipal housing bureau of Berlin was formally put into operation. It aims to provide better dwellings for the working classes and is under the direction of a number of city officials. Various other bodies which are interested in housing will coöperate with the new bureau. Its running cost is estimated at $25,000 per year.

The May issue of *Special Libraries*, the publication of the Special Libraries' Association, contains a complete bibliography on the subject of efficiency. Nearly twelve hundred titles are listed and classified. The work has been done under the direction of Mr. H. H. B. Meyer of the Library of Congress.

The governor of Pennsylvania has approved the Ambler metropolitan planning district bill permitting the suburbs of Philadelphia to unite in promoting plans for uniform and coöperative development. Under this act a district within a radius of twenty-five miles of Philadelphia is created into a metropolitan district for the purpose of planning highways, roads, parks, water supply, sewerage, sewage and garbage disposal, housing, sanitation, play-grounds, civic centers and other public improvements. The bill provides an executive department, under a

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planning commission, appointed by the governor for a term of three years. The committee consists of fifteen members—twelve residents of the district and three residents of Philadelphia. The commission is to serve without compensation, and has authority to employ experts and engineers, the expenses to be paid by special assessments, levied by the commission against all the districts, not to exceed one-tenth of one mill in any year. Under the commission's jurisdiction plans, maps and diagrams are made for the district, as well as comprehensive plans for all kinds of improvements for the consideration of the district. The commission has no power to execute its plans; that is done by the local authorities, who may ask for suggestions in regard to any specific improvement.

The present activity of the American seaports, in extending and improving their dock facilities, and the large sums now being appropriated for this purpose, give added significance to the recent announcement that the Port of London Authority will spend over $80,000,000 during the next four years in building new docks and in increasing the capacity of those already existing. Two new docks, the North Royal Albert and the South Royal Albert, are to be constructed, several of the older docks are to be deepened, and a new pumping station is to be installed. That this increase in docking facilities is needed may be seen from the fact that the 1912 report shows half a million net tons increase in foreign trade over the 1911 report. The work is in charge of the London Port Authority, created by act of parliament in 1908 to control all the harbors and docks of the port of London. This body has the right to issue bonds and stock, to build new docks, modernize the existing ones, and in general to handle the London dock problem in a large and thoroughgoing fashion. It is an appointed, not a selected, body.

The American City announces the formation of an "American City Bureau" for the purpose of promoting the "prosperity and general welfare of municipalities of all sizes, and the health, safety and comfort of their citizens." It plans to coöperate with individuals, private societies or public officials in solving any problems, as, for instance, conducting membership campaigns, raising funds for civic purposes or creating efficient organizations. It will also serve as a clearing-house for information concerning municipal improvements and community advance, furnishing information asked for, data for civic exhibits, lecturers and lantern slides for public meetings, and experts for the

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studying and handling of various problems. The bureau will also sell books and pamphlets relating to municipal questions, and to this end has already issued a booklet containing a selected list of such books properly classified.

Among the articles appearing in *The American City* for May and June the following are of especial interest: "Bridges and Bridge Approaches," by Frank Koester; "Some Fundamentals of Housing Reform," by Dr. James Ford; "The Hydrolytic System of Sewage Tanks at Norwich, England," by Arthur E. Collins, city engineer of Norwich; "Some Impressions of City Planning in America," by E. G. Culpin, secretary of the English Garden Cities and Town Planning Association; "Municipal Highway Organization," by W. H. Connell, chief of the Philadelphia bureau of highways and street cleaning; "How the Parks and Boulevards of Kansas City are Financed," by G. E. Kessler; "The Organization and Functions of a city Planning Commission," by Hon. W. A. Magee, mayor of Pittsburgh; "Transportation and City Planning," by Milo R. Maltbie; "Municipal Market Buildings in the Philippines," by John R. Arnold of the executive bureau, Manila; "City Forestry Methods in a New England City," by W. W. Colton, city forester of Fitchburg, Mass.; and "How to Improve or Conserve your Public Water Supply," by George W. Fuller.

The port commissioners of Boston have brought to completion sufficient for present use by the Hamburg-American steamship line the Commonwealth pier, the longest passenger and freight pier in the country. This exceptionally long pier was undertaken and built at five months' notice in order to provide accommodation for the new line of transatlantic steamers docking in Boston. The work represents the culmination of long planning by the commercial interests of the city which had for many years desired a public pier at which the largest vessels could dock and which would be conveniently situated for transporting freight to the railroads and to the city by trucks. The federal government provided the channel, using for the work one of the largest dredges ever built. The city has constructed a bridge across an inlet and paved a street in order to provide access to the pier from the wholesale business district of Boston. The site selected was that of a former commonwealth pier which had been used mostly for railroad purposes and had lately been burned and fallen into disuse. The formal dedication of the present pier was held on May 30.

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On May 15 a city market was opened in Des Moines in a new market house which had cost the city $50,000. The building, while substantially constructed, has been widely criticised from an artistic point of view as well as from the fact that it consists of two stories instead of being built on one floor. The second floor contains a refrigerating plant. It is expected that the city will set the example in this municipal market by inforcing the new law, which took effect July 4, requiring all food displayed in grocery stores and markets to be protected from flies, dust and dirt.

Both St. Paul and Milwaukee are to follow the example of New York, Minneapolis and other cities, by selling municipal bonds in small amounts at department stores in the cities.

The plans for various undertakings managed under municipal ownership and operation do not show signs of growing fewer. During the present season municipal ice houses find considerable favor. Among other schemes which are being discussed widely are those for the municipal saloon, a municipal machine shop in Los Angeles, and a state-wide municipal theatre law in Iowa.

The Manchester (England) Municipal Tramways have allotted $486,650 from the yearly profits for the relief of city taxes. This contribution is practically 5 per cent on the capital outlay of the undertaking.

The New York bureau of municipal research is publishing a series of five articles discussing "The Cost of Government in New York City," with a view to discovering the reason for the increase in the tax rate out of all proportion to the growth of population. The separate articles will later be issued as one pamphlet.

The Baldwin prize, which is offered by the National Municipal League for the best essay dealing with a municipal topic submitted by an undergraduate student in any American college or university giving instruction in municipal government, was this year divided into two prizes of fifty dollars each, one prize open to contestants from any of the above-mentioned institutions, and the other open to students in any of those institutions which had not previously won a Baldwin prize. The prize in the first class was won by Mr. E. A. Lawlor of Harvard University, and the other prize by Miss Sybel E. Loughead of Radcliffe College.

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The subject for the competition in 1913 was "The Best Sources of City Revenue."

Figures supplied by the Pittsburgh Experiment station of the United States bureau of mines and by the *Iron Age* testify to the enormous waste in cities due to the smoke nuisance by causing the destruction of civic beauty, the depreciation and delapidation of bridges, viaducts, and buildings, etc. It is estimated that the annual loss through smoke is, in Cleveland, $6,000,000, in Cincinnati $8,000,000, in Pittsburgh $10,000,000, and in Chicago $17,000,000.

Seventeen years ago the London county council decided to compile a ground plan of London. The enterprise has just been completed at a cost of over $100,000, and is for the use of municipal authorities and as a matter of record for the future. Its purpose is to provide a ground plan of London's 114 square miles in order to aid the council in ascertaining the ownership of property affected by street improvements and other schemes. Nearly 40,000 estates are represented. The difficulty of producing the map has been very great owing to the trouble of finding out definite particulars of ownership in many cases and owing also to the refusal of the land registry office to coöperate with the London county council. It might be mentioned also that the council periodically publishes a six-inch map of London for the purpose of showing the progress of building operations.

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NEWS AND NOTES

Personal and Bibliographical

EDITED BY J. M. MATHEWS[1]
University of Illinois

Prof. Amos S. Hershey, of the University of Indiana, has received an appointment to one of the Kahn traveling fellowships for next year and will make a trip round the world, visiting Europe, India, China and Japan.

Prof. John R. Commons of the University of Wisconsin has been appointed by President Wilson a member of the industrial commission.

The University of Texas has established a bureau of municipal research and reference. It will be under the direction of Dr. Herman G. James, adjunct professor of political science in the university.

Prof. Paul S. Reinsch, of the University of Wisconsin, has been appointed American Minister to China.

Miss Emily Greene Balch has been appointed professor of political economy and of political and social science at Wellesley College.

Mr. Delos F. Wilcox has severed his connection with the public service commission of New York City and will engage in private practice as a consulting franchise and public utility expert.

Prof. Raymond G. Gettell of Trinity College, Hartford, gave two courses in political science at the university of Illinois at the summer session.

Prof. A. F. Pollard of the University of London gave a series of lectures in "English Parliamentary Institutions" at Cornell University and the University of Illinois in April and May. He spent five weeks at Cornell and two weeks at Illinois.

[1]In the preparation of book notes, assistance was received from Professors J. W. Garner, W. F. Dodd and B. F. Moore.

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Professor Hammond of the Ohio State University has been appointed by Governor Cox a member of the commission on coal mine investigation.

Prof. John H. Latané, professor of history and international law at Washington and Lee University, has been appointed professor of American history and head of the department of history at Johns Hopkins University. He will enter upon his new duties in the fall. During July, Professor Latané delivered a course of lectures on international law at the Naval War College, Newport, R. I., and during August he will lecture at the Summer School of the University of Chicago.

Prof. W. Starr Myers of Princeton University is giving courses in history and political science at the Summer School of Johns Hopkins University.

Dr. F. A. Cleveland, until recently a member of the Presidents commission on economy and efficiency, has been engaged by Hon. Jno. Purroy Mitchell, collector of the port of New York, to take charge of an investigation at the New York customs house.

Mr. G. A. Wood and Mr. J. R. Knipfing, until recently graduate students at Columbia University, have been appointed instructors in history and politics at Princeton University.

Prof. Edward Elliott, of Princeton University, who has been on leave of absence during the past year, has received a continuation of his leave of absence for the year 1913–14. His courses in international law and diplomacy will be given by Mr. Philip M. Brown of Harvard University. Mr. Brown was formerly minister to Honduras.

Prof. Howard L. McBain has resigned his position as associate professor of political science at the University of Wisconsin. During the absence of Professor Goodnow in China, Professor McBain will give the course in municipal science at Columbia University.

Dr. E. Dana Durand, formerly director of the census, has accepted the position of director of the bureau of social statistics at the University of Minnesota. He will have the rank of professor and will give courses in economics and political science.

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The regents of the University of Minnesota, at their meeting in June, created a separate department of political science and transferred to that department Prof. W. A. Schaper, Assoc. Prof. J. S. Young, Assoc. Prof. C. D. Allin, and Dr. M. N. Olson. Prof. W. A. Schaper, of the University of Minnesota, has been granted a leave of absence for next year in order to continue his investigations in municipal government.

Prof. A. B. Hart of Harvard University has been spending several months in the Balkan States, studying political conditions there.

Prof. John A. Fairlie of the University of Illinois has been granted a leave of absence for the second semester of next year. He expects to spend his vacation in Europe in the study of municipal conditions.

Mr. J. H. Reynolds, professor of political science in the University of Arkansas and acting president of the University during the past year has accepted a call to the presidency of Hendrix College.

Dr. L. M. Bristol, formerly of Tufts College, has been appointed an assistant professor in the department of social and political science of Brown University.

Dr. Charles McCarthy, of the legislative reference bureau at the University of Wisconsin was given the degree of doctor of letters at the commencement at Brown University in June, 1913.

Mr. U. G. Dubach, who took his doctor's degree at the University of Wisconsin in June, 1913, has accepted the position of professor in political science at Oregon Agricultural College, Corvallis.

Mr. S. Gale Lowrie, professor of political science at the University of Cincinnati, was in charge during the last legislative session of the Ohio legislative reference bureau at Columbus.

Mr. W. S. Donaldson, recently of the public affairs board of Wisconsin, has accepted a position in the legislative reference bureau at Columbus, Ohio.

New appointments to the faculty of New York University include Mr. Milton E. Loomis, formerly instructor in government at the Uni-

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versity of Cincinnati, instructor in municipal government; Earl Crecraft, formerly instructor in politics at Columbia University, instructor in government; Mr. J. P. Selden, formerly vice-consul-general at Bangkok, Siam, lecturer on consular methods; Mr. F. W. Lindars, lecturer on municipal accounting; and Mr. M. S. Moyer, lecturer on public utilities.

Prof. E. D. Fite, of Yale University, has been selected to occupy the newly endowed chair of political science at Vassar College.

Dr. J. H. Russell, who received his doctor's degree in June at Johns Hopkins University, has been appointed assistant professor of political science at Allegheny College. His doctor's dissertation which deals with the status of the free negro in Virginia from 1619 to 1865 will shortly appear from the Johns Hopkins Press.

Mr. H. J. Peterson of the department of government of the Iowa State Teachers College has been granted a year's leave of absence which he will spend in study at the University of Iowa. His work will be cared for by Mr. Lew McDonald of the University of Chicago.

Dr. Chas. H. Meyerholz, head of the department of government in the Iowa State Teachers College, returns to his work in the College after spending a year's leave of absence in the study of law at Harvard University.

Mr. W. C. Murphy has been appointed assistant professor of history and political science in the University of Arkansas.

Mr. F. N. Judson is a member of the board of freeholders of St. Louis, elected for the purpose of revising the charter of St. Louis.

Prof. W. J. Shepard, of the University of Missouri, has been promoted from assistant professor to associate professor of political science in that institution. He was also recently elected a member of the city council of Columbia, Mo.

Mr. R. C. Journey, who has been appointed university fellow in political science in the University of Missouri for the session of 1913–14, has been given permission by the faculty of the graduate school to

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spend the first semester of next session in the Wisconsin legislative reference library, under the direction of Dr. Charles McCarthy, and will receive credit for the work in accordance with the plan of the committee on practical training of the American Political Science Association.

Randolph-Macon Woman's College, at Lynchburg, Virginia, has recently established a separate department of political science, under the charge of Prof. J. F. Peake.

Prof. Henry W. Farnam, of Yale University, has been appointed Roosevelt professor at the University of Berlin for 1914–15.

Prof. Karl F. Geiser, of Oberlin College, is spending the summer months in Germany, making a special study of local rural government, with special reference to the relations between it and city administration.

Dr. Robert T. Crane, Ph.D., Johns Hopkins, 1907, has been appointed to an assistant-professorship of political science at the University of Michigan. Since 1907 Dr. Crane has been in the United States consular service at Montreal, Guadeloupe, French West Indies, and Rosario, Argentine. His work at the University of Michigan will be largely in the field of municipal administration, in connection with which the university is proposing to establish a bureau of municipal reference for the purpose of supplying to the municipalities of the State information regarding charter provisions and other matters of municipal government and administration, the need for which has been shown by the activity of cities in the State in redrafting their charters under the provisions of the home rule act.

During the absence of Prof. John Bassett Moore, recently appointed counsellor to the department of state, his courses in international law at Columbia University for the next year will be given by Drs. Arthur K. Kuhn and Ellery C. Stowell. Professor Goodnow's courses will be given by Mr. T. R. Powell.

Prof. John E. Macy has recently resigned from the law school of Boston University, where he has for some time been giving courses in constitutional, administrative and municipal law. Professor Macy is the editor of an excellent volume of cases on municipal corporations.

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Prof. John Westlake, K.C., LL.D., D.C.L., professor of international law at the University of Cambridge 1888–1908, died April 14 last at his residence in London. Professor Westlake was born in 1828 in Cornwall, was graduated from Cambridge University in 1850 and was fellow of Trinity College, Cambridge, from 1850 to 1860. During his fellowship he was called to the bar and in 1858 published his well known treatise on *Private International Law*, which in its fifth edition, 1912, is still an authoritative text-book. Professor Westlake once stated that his attention was first drawn to international law by Christie, the eminent conveyancer, of whom he was a pupil. "He and John Venn Prior, the equity draftsman, were the counsel in whose chambers I read in my student days. Christie suggested to me to write a book on private international law, or the conflict of laws, what was wanted, as he described it, was 'to make Story readable.' I took the advice, but found that something more than he had expressed was required, and the result was my *'Treatise on Private International Law.'*"

Professor Westlake was one of the founders of the *Institute du Droit International*, and of the *Révue du Droit International et de Législation Comparée*. His abiding interest in public international law found expression in his volume entitled *Chapters on the Principles of International Law* (1894) and in his *International Law* (two volumes, 1904–07) He sat in the parliament of 1885 as a Liberal, representing the Romford division of Essex. From 1900 to 1906 he was one of the British members of the international court of arbitration at The Hague. His position has been described as follows: "A jurist trained in the school of Austin, a clear expositor, attentive to definitions, he shared the defects, neither few nor unimportant, of that school; but he possessed, and in high degree, their virtues also. Enough to say that he was a clear and sagacious thinker, with remarkable powers of analysis, acutely suggestive, and with wide outlook."

The first American Conference on Social Insurance was held in Chicago, June 6–7, under the auspices of the American Association for Labor Legislation. The sessions were devoted to insurance aspects of workmen's compensation, next steps in social insurance, and comprehensive plans of social insurance. The papers which were read will be published in the *Journal* of the Association.

A conference on the Relation of Law to Social Ends was held, April 25–26 in New York City. An abstract of the papers and discussions will appear in the *International Journal of Ethics*.

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Harvard University has devoted a fellowship in continental law to the service of that division of the work of the Library of Congress. This institution has made important strides during the last few years in the development of its section of continental law, which has become a growing source of information for jurists and practitioners throughout the country. The first published fruits of that work have been a *Guide to the Law and Legal Literature of Germany* (1912) and a bibliographic pamphlet, *The Bibliography of International Law and Continental Law.* (1913). These are to be followed by guides to the law of France, Italy, Spain and Austria-Hungary. The fellowship established by Harvard, which is to be enjoyed during 1913–1914 by T. W. Palmer, Jr., is for this year to be devoted to a study of the law of Spain, six months being spent in the Library of Congress and six months in Spain. The researches of Mr. Palmer will be utilized in the volume on *The Law and Legal Literature of Spain.* The work is carried on under the direction of the law librarian.

The work of the President's commission on economy and efficiency came to a close on June 30 with the expiration of the appropriation for the fiscal year. President Wilson, it is understood, has intimated that he will not be in a position to press for a new appropriation until after the tariff and currency matters have been disposed of.

The Harris political science prizes, established by Mr. Norman W. Harris, of Chicago, have been awarded as follows: the first prize of $250 to Mr. William Anderson, of the University of Minnesota, for his essay upon public service commissions; second prize of $150 to Miss Maude A. Perry, of Purdue University, for her essay upon child labor legislation; the third prize of $100 to Mr. A. J. Buscheck, of the University of Wisconsin, who wrote upon public service commissions.

Prizes in the same amount will be offered for the year 1913–14 for the best essays upon the following subjects:

1. Judicial Review of Administrative Decisions.
2. County and Township Government (a treatment of existing institutions and proposed reforms in any one State of the middle west is recommended).
3. The Relation of the State to the Municipality (treatment should be limited either to a single State, or to a special topic under the general title, e.g. State Control of Public Utilities, Police, Public Health, etc.)

As heretofore, the competition will be confined to undergraduates of the universities and colleges in the following States: Indiana, Illi-

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nois, Michigan, Minnesota, Wisconsin, and Iowa. The essays must not exceed 10,000 words, must be typewritten on paper 8½ by 11 inches in size, and mailed on or before May 1, 1914, to Prof. N. D. Harris, 1134 Forest Avenue, Evanston, Illinois, marked "for the Harris Political Science Prize." Contestants are required to mark each paper with a "nom-de-plume," and to enclose in a separate envelope their full name and address, class and college. The donor reserves the right not to award any or all of the prizes offered, whenever the committee shall decide that the essays submitted are not of a quality to deserve the reward. And the donor also reserves the right of publishing the best of the essays in such of the popular magazines, or newspapers, as shall ensure a widespread public notice of the work done. For any additional information concerning the scope or the conditions of the contest, inquiries should be addressed, with stamped envelope for reply, to Prof. N. D. Harris, Northwestern University, Evanston, Illinois.

The following platform and supplementary resolutions were adopted by the Lake Mohank Conference on International Arbitration at its nineteenth annual conference, held in May.

Platform. The nineteenth annual Lake Mohonk Conference on International Arbitration, in view of the probable meeting of a third Hague Conference in 1915, respectfully recommends:

1. That the secretary of state of the United States urge the nations which participated in the second Hague Conference to form immediately the international preparatory committee recommended by it to prepare and submit to the nations a program for the Third Hague Conference, and to devise a system of organization and procedure for the Conference itself.

2. That the secretary of state consider the expediency of submitting to the international preparatory committee at an early date a list of the topics which the United States especially desires to have considered at the third Hague Conference with an outline of the proposals of the United States on each topic.

3. That the third Hague Conference reconsider the question of a general treaty of arbitration which shall, in accordance with the principle of obligatory arbitration unanimously adopted by the second Conference, submit to arbitration without restriction disputes of a legal nature, or relating to the interpretation and application of international agreements, and such other controversies as may be considered susceptible of arbitral or judicial determination.

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4. That the court of arbitral justice, approved in principle by the second Conference, be established, for the adjudication of the disputes of a justiciable nature, without altering the status of the permanent court of arbitration.

5. That the exemption from capture of innocent private property of the enemy on the seas be considered anew by the third Hague Conference.

6. That in general, greater stress be laid by the third Hague Conference upon the means and measures by which peace may be maintained, or restored when broken, than upon the rules and regulations of warfare.

Supplementary Resolutions. Resolved: That the independent negotiation of treaties or conventions of particular or special interest to two or more contracting powers, analogous in nature and scope to the Rush-Bagot agreement of 1817, without regard to common consent or general participation is highly desirable.

Resolved: That the utmost possible publicity concerning all consummated international agreements, whatever their nature or content, would conduce to the peace of the world.

Resolved: That in the interests of commerce, friendly intercourse and peace, all agreements between nations, whether general, particular or special, should be fully executed, or lived up to, in spirit as well as in letter.

Resolved: That this Conference desires to call attention at this time to the recommendations of the first and second Hague Conferences that commissions of inquiry be instituted on occasion to report the facts on serious disputes arising between any two signatory powers; and bearing in mind the valuable service rendered by a commission of inquiry in 1904 in settling the North Sea incident between Great Britain and Russia, this Conference notes with peculiar interest the proposal of the secretary of state of the United States to make use of standing commissions of inquiry which shall be allowed adequate time for their investigations.

Resolved: That the committee of the Lake Mohonk Conference appointed May 20, 1910, to report to the Conference of 1911 as to the best method of carrying into effect the recommendation of successive Presidents of the United States that the United States government be vested with power to execute through appropriate action in the federal courts its treaty obligations, and, generally, to furnish adequate protection to alien residents in the United States, be renewed.

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Hereafter the *Zeitschrift für Internationales Recht*, edited by Dr. Niemeyer, will appear in two sections, one on international private law and the other on public international law. In connection with the latter, with the coöperation of Dr. Karl Stripp, of Hamburg, a *Jahrbuch des Völkerrechts* will be issued.

Messrs. Duncker and Humblot, of Munich and Leipzig, announce the publication of the seventh edition of the *Encyclopädie der Rechtswissenschaft in systematischer Bearbeitung*, founded by Von Holtzendorff and now edited by Dr. Kohler, of Berlin.

The efficiency division of the Chicago civil service commission has published a valuable series of charts showing an analysis of departmental organization in the municipal administration of Chicago, brought down to March of the current year.

Prof. E. S. Corwin of Princeton University has in preparation a work entitled *The Growth of the American Doctrine of Constitutional Law*, to be issued through Messrs Henry Holt and Company.

Volume XVII of the University of Toronto Studies (Toronto: University Press, 1913. Pp. 240) is devoted to a *Review of Historical Publications Relating to Canada*. The contents are, however, somewhat broader than this title and furnish most welcome critical bibliographic references to the political scientists. Especially is this true of the chapters considering "The Relations of Canada to the Empire," and "Law, Education and Ecclesiastical History." The volume is edited by Prof. George M. Wrong and W. Stewart Wallace.

President Arthur T. Hadley's *Some Recent Influences in Modern Philosophic Thought* (New Haven: Yale University Press, 1913. Pp. 146) contains an interesting chapter entitled "New Views of Politics and Ethics" in which he points out that the principle of individualism which is commonly dated from Ricardo and Bentham finds its real origin in the decisions of the English common law judges during the three or four centuries that had preceded them.

In the volume entitled *History as Past Ethics* (Boston: Ginn and Company, 1913. Pp. 387) which he offers as complementary to his well known series of historical text-books, Prof. R. V. Myers described

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the moral conceptions of different races and different periods as concretely exhibited in history. Beginning with the essential facts of intratribal morality, suggestive chapters deal with the ethical ideals of Egypt, China, Japan, India, Israel, Greece, Rome, Christianity, and Islam. The final chapter is devoted to outlining the moral evolution since the incoming of democracy—to "The New Social and International Conscience." While not primarily political in character, the work will interest those historians of political theories who seek these theories as implicit in political practice rather than as explicit in formal treatises.

The Oxford University Press announce the early publication of *The Rise and Fall of the High Commission* by Roland G. Usher, and *The King's Council during the Middle Ages* by James F. Baldwin.

Publications soon to be issued by the State Historical Society of Iowa include *Township Government in Iowa* by C. R. Aurner, and *County Government in Iowa*, by Prof. F. H. Garver.

The Macmillan Company have issued H. G. Well's *New Worlds for Old* (New York: 1913. Pp. 333) in their Standard Library Series, the volumes of which are sold for 50 cents each.

Two recent issues (numbers 14 and 15) of the "Kingdom Papers" by Mr. J. S. Ewart deal respectively with the North Atlantic fisheries, and a permanent naval policy for Canada.

The Yale University Press announces the early publication of *The Ethics of Public Service*," by Henry Crosby Emery, who recently returned to Yale to resume the work which he set aside temporarily to serve on ex-President Taft's tariff commission.

Among the announcements of the Harvard University Press are: *Studies in Anglo-Norman Institutions*, by Prof. C. H. Haskins; *A Bibliography of Municipal Government* by Prof. W. B. Munro; and *Cases on Constitutional Law*, by Prof. Eugene Wambaugh.

The publication of *The Reconstruction Period, 1865–1877*, by James Schouler is announced by Messrs Dodd, Mead and Company. This is volume VII of Dr. Schouler's *History of the United States*, and brings

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to a close his notable work covering the period since the adoption of the Constitution.

A History of Roman Law, by Andrew Stephenson, Ph.D. (Little, Brown and Company, 1912), has been withdrawn from circulation by its publishers.

Students of politics as well as those of economics are under obligations to Professor Seligman for his revised and rewritten *Essays in Taxation*. It is indeed very much of a question whether matters of taxation do not as properly fall in the field of political science as in that of economics. The special value in this collection of essays lies in the fact that through them one is enabled to follow the more important changes that have taken place during the last quarter of a century regarding the policy both of our own and of foreign governments in respect to the means employed by them for securing their revenues. Though consisting of technical essays in taxation, there is much in this volume that is of prime interest to persons interested in public affairs from the broader viewpoint.

The inefficiency of the American legislatures is a favorite topic for students of politics. This inefficiency is not wholly due to faults of composition, methods of selection or organization. To a considerable extent the poor quality of their product results from failure to observe even the most elementary technical requirements in the discharge of their duties. It is a source of congratulation that increased attention is being given by students of politics to the technique of governmental operations. Our literature on the science or art of law making is all too scanty. It is for this reason that the recent work of Chester Lloyd Jones entitled *Statute Law Making* is especially welcome. The work is well arranged and published in an attractive form. Mr. Parkison in the *Columbia Law Review* has pointed out that many of the chapters follow with closeness Williards *Legislative Hand-Book*, and that the one relating to the arrangement of the subject matter of bills is in large measure drawn from the essay by George Coode entitled "Legislative Expression or the Language of the Written Law."

Of interest as throwing a side-light upon certain phases of international politics may be mentioned *The Trade of the World*, by J. D. Whalpley (New York, The Century Company, 1913. Pp. 350).

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Panama, Past and Present, by Farnham Bishop (New York, The Century Company, 1913. Pp. 271) contains an interesting popular account of the history and geography of the Canal Zone, the birth of the Panama Republic, and the significance to America of the opening of the canal. The author is the son of the secretary of the Isthmian canal commission.

Under the title *Union and Strength*, by L. S. Amery, M. P. (London, Arnold, 1912. Pp. 327) is republished a series of papers dealing with British imperial problems and policies.

The *University Magazine*, devoted to the politics, industry and other interests of Canada, contains, in its number for April, 1913, articles on "The Referendum," "Militarism," "The Game of Politics," "The Civil Service," and the "Marriage Law of Canada."

The first number of a new monthly journal, *The New York Japan Review*, appeared in July. The object of this journal is "to interpret Japan to America and America to Japan." The first issue contains articles on "The Founding of Japanese-American Friendship," "World Conciliation" and "The American Position in Japan," together with editorial comment on the California imbroglio.

The Carnegie Endowment for International Peace has issued a *Year Book for 1912*, embodying a résumé of the work of the Foundation during the past year, as contained in the official reports of the secretary, the executive committee, and the directors of the divisions of intercourse and education, economics and history, and international law.

Experiments in Government and the Essentials of the Constitution, by Hon. Elihu Root, senator from New York and former Secretary of State (Princeton University Press, 1913. Pp. 88), is a brochure attacking the so-called radical tendencies of the day and appealing for a return to the conservative principles of the founders of the Constitution.

The Princeton University Press has also published *The Two Hague Conferences* (pp. 124) by Joseph H. Choate, in which the proceedings of the conferences are summarized and interpreted. The text consists of the Stafford Little lectures delivered in 1912 at Princeton University.

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In *Modern Democracy, a Study in Tendencies*, by Brougham Villiers (London: T. Fisher Unwin, 1912. Pp. 304), is presented a series of somewhat discursive essays upon various phases of modern liberalism and the labor movement in England.

The opening addresses of President Nicholas Murray Butler, delivered at the Lake Mohonk Conferences on International Arbitration for the years 1907 to 1912, have been reprinted under the title, *The International Mind: An Argument for the Judicial Settlement of International Disputes* (New York: Charles Scribner's Sons, 1913. Pp. x, 121).

In Dr. Ernest F. Henderson's *Symbol and Satire in the French Revolution* (New York: G. P. Putnam and Sons, 1912. Pp. xxxii, 456) one may follow the course of the French Revolution as depicted by contemporary cartoons and drawings, many of them extremely rare, of which there are nearly two hundred excellent reproductions. The text is an interesting and scholarly commentary upon the illustrations.

According to the *Year Book* for 1912 of the Carnegie Endowment for International Peace (Washington, D. C.: 1913. Pp. 166) the Endowment will soon publish an English translation of the last edition of Prof. Pasquale Fiore's *Diritto Internazionale Codificato*. It further proposes to collect and print the documents of the first and second Hague Conferences. Subventions have been made, one of $20,000 per year to the Institut de Droit International for the expenses of the members in attending its meetings, and another of $15,000 per year to the following journals: *Révue de Droit International et de Législation Comparée; Révue Générale de Droit International Public; Revista de Diritto Internazionale;* and the *Japanese Journal of International Law.*

The essay by the Polish sociologist, M. Erasme De Majewski, entitled, *La Science de la Civilisation* (a French translation of which was published in 1908), has appeared in a second edition (Paris: Alcan, 1910. Pp. vi, 352), together with the concluding volume, *La Théorie de l' Homme et de la Civilisation* (Paris: Le Soudier, 1911. Pp. xv, 351). In these volumes M. De Majewski develops a monistic theory of civilization and substitutes a philosophy of civilization for a religion of humanity. Humanity he finds to be a fiction; true society is found only among men where the units are morphologically similar and functionally differentiated. Civilization is the life of society and embraces

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the sum of the manifestations of social activity, not only physical products but ideas. To this great sum as a real unity he applies the term "Reality D." In the concluding volume the characteristics of the "Reality D" are separately considered and civilization found to be dependent upon continuous individualization, "egomorphism" being the transforming agent, condition and creative power of civilization.

The sixth volume of *La Vie Politique dans les Deux Mondes*, edited by A. Viallate and M. Caudel, (Paris: Felix Alcan, 1913. Pp. 648), has appeared and covers the period from October 1, 1911, to September 30, 1912. The occasion may again be taken to refer to the value of this series of annual volumes which, by reason both of their scholarly character and the promptness with which they make their appearance, are of the greatest value to those who seek to keep intelligently informed regarding current world politics. As in the earlier issues, separate chapters are devoted to the different countries, or, in some cases, to groups of countries, and, in addition, there are chapters devoted to formal international agreements (*Les actes internationaux*), to economic considerations, and to the socialistic movements. By means of constant references to the earlier volumes the series is given a unity, and, as the years go on, an increasing value as a record of the most recent events.

Public Land Grants to the States, by M. N. Olson, is the title of a doctoral dissertation which will be published as a part of the research publications of the University of Minnesota. The thesis is a study of federal land grants to the several states, with a detailed study of the administration of these lands in Minnesota.

In *Our Presidents and Their Office*, by W. E. Chancellor (New York: Neale Publishing Company, 1912. Pp. 603), is presented a running summary of the principal events in the various administrations down to the close of that of Mr. Taft. It is popular in character and intended for the use of the general reader.

The Unrest of Women, by Edward Sanford Martin (Appleton and Company, 1913. Pp. 146), is a discussion of the present disputed questions regarding the status of women in general and of woman suffrage in particular. The work is only a restatement of a conventional ideal and while recognizing that there is a persistent struggle to change the

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position of women the author ignores all the economic, political and social conditions which have given this struggle its vitality. Though eulogizing certain prominent women of the present time the work leaves the impression that women are born into a certain status and must remain there. The author writes in a pleasing and popular style but adds little of value to the subject which he discusses.

The American Academy of Political and Social Science issued in May a valuable collection of papers on *County Government*, in three parts, (1) Types of County Government, (2) Typical Problems in County Government, and (3) Plans for the Reorganization of County Government.

A new and revised edition of Prof. Stephen Leacock's well-known *Elements of Political Science* has just been issued by the Houghton, Mifflin Company. No changes of importance have been made, but the statistical data have been brought down to date, thus adding to the usefulness of this valuable manual. Professor Leacock has in preparation a work entitled *Practical Political Economy*, to be issued in 1914 by Houghton, Mifflin and Company.

The *Life of Thaddens Stevens*, by James A. Woodburn, professor of history and politics in Indiana University (Indianapolis: Bobbs-Merrill Company, 1913. Pp. 620), is of interest not only as a biography of one of the most important congressional leaders of his time, but also as a study in American political history during a period of marked congressional dominance.

Immigration, by Henry Pratt Fairchild (New York: The Macmillan Company, 1913. Pp. 455), is one of the most recent works upon this important subject. The author regards immigration not simply as an American public problem, but as "a sociological phenomenon of world-wide significance." Though comprehensive in scope, the book is nevertheless written mainly from the American standpoint. A select bibliography adds to the usefulness of the volume.

The *Judiciary and the People*, by Frederick N. Judson (Yale University Press, 1913. Pp. 260), contains the series of Storrs lectures delivered by Dr. Judson at the Yale Law School during the past academic year. After a consideration of the theory of the separation of powers, and a comparative study of Anglo-Saxon and continental systems of

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law, the book reviews the historical development of judicial power in the United States, and considers some specific grounds of complaint and suggested remedies.

The series of papers presented at the conference on Japan, held at Clark University in 1911, and later published in the *Journal of Race Development*, have been edited by Prof. G. H. Blakeslee and brought out in book form under the title *Japan and Japanese-American Relations* (New York: G. E. Stechert and Company, 1912. Pp. 348). Among the papers may be mentioned "The Relations of Japan and the United States," by David Starr Jordan; "The Family of Nations Idea and Japan," by George Grafton Wilson; "The Evolution of Japanese Diplomacy," by M. Honda; and "Japanese-American Relations as Affecting the Control of the Pacific," by Edwin Maxey.

Special Libraries for May, 1913, contains a valuable bibliography of books and magazine articles relating to the subject of efficiency in various fields, including national and municipal administration and accounting. The work, which has been done under the supervision of H. H. B. Meyer of the Library of Congress, lists about twelve hundred titles. Copies may be obtained at twenty-five cents from the secretary of the Special Libraries Association, 93 Broad Street, Boston, Massachusetts. The same publication contains, in its issue of June, 1913, a select list of references on train crew legislation.

Recent books dealing with international politics include *Common Sense in Foreign Policy*, by Sir Harry Johnston (London: Smith, Elder and Company, 1913. Pp. 119); *The Anglo-German Problem*, by Charles Sarolea (London: Thos. Nelsons and Sons, 1912. Pp. 384); and *Problems of Power*, by Wm. M. Fullerton, correspondent of the London *Times*. The last-named work is, according to its subtitle, a "study of international politics from Sadowa to Kirk-Kilisse." It is based upon the idea that the destinies of the world are now being determined by two forces, the disseminated wealth of the democracy, and public opinion.

The *Proceedings of the Third National Conference of the American Society for the Judicial Settlement of International Disputes* (Baltimore: Williams and Wilkins Company, 1913. Pp. 320) contains valuable papers and discussions presented by able international jurists at the

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meeting of the Society held in Washington last December. The papers deal principally with the means of promoting international peace, the proposed court of arbitral justice, and related topics. It may be added that, for the purpose of convenience in consultation, the method of presentation leaves much to be desired. No table of contents is supplied, and the papers are printed without adequate break in the text.

Prof. John A. Fairlie has prepared a valuable report on town and county government in Illinois for a joint committee of the general assembly. It is printed as a public document (Springfield: 1913. Pp. 219) and besides descriptive matter, contains a variety of statistical information concerning local expenditures, taxation, etc. The report traces the development of local government in the State, describes the present organization and makes various suggestions for the improvement of the existing system. There are now eighty-five counties in the State which have adopted the township form of government and seventeen which retain the county form, the latter counties being, for the most part, small in area and population and situated in the southern part of the State. One of the notable tendencies has been the decline in the relative importance of the town in comparison with the incorporated areas. The town meeting has lost much of its former importance, being very poorly attended and having only a few minor powers. If it is to be continued, says Professor Fairlie, its powers should be enlarged and steps should be taken to secure a larger attendance and greater interest. Fifteen different recommendations are made, which, in the judgment of the committee, would increase the efficiency of the present system, if they were enacted into law.

Two volumes of collected essays and addresses have recently been published almost simultaneously by two well-known publicists. These are *University and Historical Addresses*, by James Bryce (New York: The Macmillan Company, 1913. Pp. 433), and *The American Spirit*, by Oscar S. Straus (New York: The Century Company, 1913. Pp. 379). Inasmuch as the addresses contained in Mr. Bryce's book were delivered during his residence in the United States as ambassador of Great Britain, the necessity for diplomatic reserve prevented him from touching upon present-day politics. The most valuable papers in the book, from the standpoint of political science, are those upon "The Conditions and Methods of Legislation," and "The Constitution of the United States." Mr. Straus' book contains reprints of addresses and

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magazine articles relating to American commerce, diplomacy, and international relations.

The National Committee for Mental Hygiene has published a volume under the title *Summaries of Laws Relating to the Commitment and Care of the Insane in the United States* (New York: 1912. Pp. 297), which will be of interest not only to those interested in the proper treatment of the mentally unbalanced, but also to students of comparative state legislation. The laws upon this subject present a chaotic mass, but a general uniformity is discoverable. The laws are printed by States, but, for convenience of reference, a uniform scheme of classification is adopted.

Imperialism and Democracy, by Arthur Page, with an introduction by J. Austen Chamberlain, M.P. (London and Edinburgh: Wm. Blackwood and Sons, 1913. Pp. 295), contains a reprint of a series of articles from *Blackwood's Magazine*, which undertake to apply unionist principles to the solution of certain modern British problems, such as imperialism, church establishment, Irish nationality, and woman suffrage.

Under the title *Rights of Citizenship, a Survey of Safeguards for the People*, with a preface by the Marquess of Lansdowne (London: Warne and Company. Pp. 242), is published a series of essays by well-known British publicists, relating principally to the parliament act of 1911 and its effect upon the British constitution. Among the more important essays are "The Growth and Modern Development of the British Constitution," by Sir W. R. Anson, and "The Parliament Act of 1911 and the Destruction of All Constitutional Safeguards," by Prof. A. V. Dicey. The essays present in cogent manner the argument against the parliament act.

Among recent books on the Chinese situation may be mentioned *China Revolutionized*, by J. S. Thomson (Indianapolis: Bobbs-Merrill Company, 1913. Pp. 590); *The New China*, by Henri Borel (London: T. Fisher Unwin, 1912. Pp. 282); *Changing China*, by Lord Wm. Gascoyne-Cecil (New York: D. Appleton and Company, 1912. Pp. 342); and *The Flowery Republic*, by Frederick McCormick (New York: D. Appleton and Company, 1913. Pp. 447). The last-named work is a somewhat detailed account of the recent revolutionary events in China and worth consideration by any one interested in the struggle in that country. It contains a considerable number of free translations of

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decrees and edicts issued by the opposing parties which give a western reader considerable insight into the politics and claims of the imperialists and republicans. The author takes a somewhat novel view in that he believes that much of the misgovernment in China has been due not to the Manchus but to the Chinese themselves and while admitting the weakness of the last Manchu rulers presents argument to prove that on the whole they have ruled China relatively well. Though the book is largely a chronicle of political events some space is devoted to the crucial question of the necessity of reforming China socially and economically.

Books in English upon the institutions and customs of Persia by natives of that country are all too few, and for this reason the volume by Youel B. Mirza, entitled *Iran and the Iranians* (Baltimore: Williams and Wilkins Company, 1913. Pp. 265), is especially welcome. The volume opens with a brief outline of the history of Persia, including an account of recent constitutional developments and politics; then follow chapters dealing with the government and administration, jurisprudence, education, the international relations with Russia and England, the mission of Mr. W. Morgan Shuster, and the present regulations governing the levying and collection of customs. A very interesting chapter is devoted to Persian literature, in which its influence upon modern poetry is considered; and the volume concludes with some thirty pages of characteristic folk-lore and native stories translated into English by the author. There are a number of illustrations and a map showing the Russian, British and neutral "spheres of influence." The work is in excellent English and gives evidence of intelligent and impartial scholarship.

Students of political theory will be glad to learn that a new edition has appeared (the fourth) of Janet's *Histoire de la science politique dans ses rapports avec la morale* (Paris: Felix Alcan, 1913). This valuable work has been out of print for some years and the new edition has been printed in response to a demand from many quarters.

Other new books recently published by Alcan, of interest to students of political science are *La question de la population*, by Paul Leroy-Beaulieu; *La representation proportionnelle en France et en Belgique*, by G. Lachapelle; *La paix armée, L'allemagne et la France en Europe* (1885–1894), by P. Albin; *La crise politique de l'Allemagne contemporaine*, by W. Martin; and *L'Angleterre radicale* 1905–1913, by J. Bardoux.

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Panama and What It Means, by J. F. Fraser (New York: Cassell, 1913. Pp. 281), is not a book to be classed, as might perhaps be inferred from the latter part of its title, among serious studies of the economic and political significance of the Canal. Its author is an English traveler of wide experience, the writer of a number of descriptive works, and he has here given a traveler's impressions of a three weeks' visit to Panama during the construction of the Canal, followed by glimpses of the romantic history of the country and by a very brief sketch of the present and anticipated development of the Pacific. Though far from convincing, the author discusses questions to be pondered by Americans in his final chapter headed "What is the Use of it All?" in which he maintains that the Canal will be of small commercial value and that it will be "nothing short of marvelous" if an enemy can be prevented from disabling it the moment hostilities commence. There are many excellent illustrations of the Canal works.

In accord with a recommendation by the Pan-American Scientific Congress in 1908 to the universities of the American republics of a study of the operation of their respective political institutions for the purpose of deducting through comparison the social conditions and law to which are subject the operation and development of republican government, Prof. J. N. Matienzo of the Universities of Buenos Aires and La Plata, formerly senator and judge in the province of Buenos Aires, has published *Le Gouvernement Représentatif Féderal dans la République Argentine* (Paris: Hachette, 1912. Pp. 336, and appendix containing the Argentine constitution with amendments, in French). The work leaves much to be desired in several respects—particularly in arrangement and thoroughness; it is to be hoped that a better study of Argentine government is to appear. Yet the book has conspicuous merits which will probably not be surpassed. The difficult subject of the wide gap between law and practice amounting to subversion of the Constitution is treated with great justice. This gap the author ascribes not to the federal form but to the utter failure of the representative principle of organization in Argentina owing to the indifference of the people to political affairs, and the consequent control for purely selfish ends by a small traditional oligarchy.

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RECENT DECISIONS OF STATE COURTS ON POINTS OF PUBLIC LAW

Martial Law. Ex parte Jones. (West Virginia, March 21, 1913. 77 S. E. 1029.) The constitution of West Virginia authorizes the governor to call out the militia to execute the laws, suppress insurrection and repel invasion. The code (chap. 18, sec. 92) authorizes the commander-in-chief, in the event of invasion, insurrection, rebellion or riot, in his discretion to declare a state of war in the districts where such disturbances exist. Held, the courts will not question the justification of the governor in declaring a state of war, and, on habeas corpus, will inquire only into the legality of present custody, and not into the validity of penitentiary sentences imposed for definite terms.

Delegation of powers—Referendum to locality affected. People vs. Kennedy. (New York, March 14, 1913. 101 N. E. 442.) An act to erect the county of Bronx sustained, though submitting the question of the erection to the people of the territory comprised within the proposed county. Distinguished from Barto vs. Himrod, 8 N. Y. 483, where the referendum was State wide; the electors of a restricted locality may be permitted to determine whether the provisions of a "completed" act shall become operative or shall be taken advantage of.

Delegation of powers—Re Municipal Charters. (Vermont—Opinion of Justices—January 13, 1913. 86 Atl. 307.) The legislature cannot leave it to a public service commission to determine the plan and frame of government of villages to be organized.

Administrative law—Regulations. State vs. Normand. (Maryland, January 7, 1913. 85 Atl. 899.) An order issued by the State board of health that all bread before removal from the baking room must be wrapped in unused paper is not an exercise of invalidly delegated legislative power.

Constitution and statute. Lanigan vs. Gallup. (New Mexico, April 10, 1913. 131 Pac. 997.) A constitutional provision to the effect that no city shall contract any debt except by ordinance, etc., subject to certain limitations, with a proviso that any city may contract debts in excess of such limitation for certain purposes, does not authorize a municipality to contract a debt for one of these purposes without statutory authority.

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Taxation. State vs. Birmingham Southern R. C. (Alabama, February 14, 1913. 62 So. 77.) The fact that the constitution requires for the support of schools a special annual tax of 30 cents on each $100 of taxable property, does not prevent the legislature from prescribing that property for the purpose of taxation shall be assessed at 60 per cent of its fair and reasonable cash value.

Taxation. McKennon vs. McFall. (Tennessee, April 3, 1913. 155 S. W. 158.) The State may tax a resident's intangible property, held outside of the State and taxed where located.

Equal protection of the laws. Vosburg vs. A. T. & S. F. R. Co. (Kansas, March 8, 1913. 130 Pac. 667.) A statute does not deprive railroad companies of the equal protection of the laws by providing that shippers who sue railroad companies for failure to furnish cars may recover attorneys' fees, while railroad companies may not recover attorneys' fees from shippers whom they sue successfully for detaining cars.

Penalties—ex post facto laws. State vs. Adams. (Kansas, May 10, 1913. 132 Pac. 171.) A statute imposing a higher penalty for a repeated offense may be applied although the first offense was committed previous to the enactment of the statute. Relying upon 224 U. S. 616.

Penalties—Repeated offense. Goeller vs. State. (Maryland, November 12, 1912. 85 Atl. 954.) The fact that accused has been previously convicted of a similar offense may not be ascertained by the court merely from the court dockets, if the repeated offense carries a higher penalty, since under the constitution the previous offense must be alleged in the indictment and established by the verdict.

Penalties—Imprisonment for debt. People vs. Heise. (Illinois, February 20, 1913. 100 N. E. 1000.) A statute punishes wife abandonment by fine and imprisonment, and provides that the court may direct the fine to be paid in whole or in part to the wife, and also that the court may order defendant to pay a weekly sum for one year to the wife, and release him from custody on probation, and may sentence him on the original conviction if he violates the order. Held this violates no constitutional provision, among others not that relating to imprisonment for debt. See also State vs. Gilmore, Kansas. February 8, 1913. 129 Pac. 1123.

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Personal rights—Infants; jury. Lindsay vs. Lindsay. (Illinois, February 20, 1913. 100 N. E. 892.) Constitutionality of juvenile court act sustained as exercise of sovereign power of protection of infants. The proceeding being statutory and not according to the course of the common law, the statute may validly provide for a jury of six.

Personal rights—Labor contracts. Fortune vs. Braswell. (Georgia, March 11, 1913. 77 S. E. 818.) A statute makes it unlawful to hire an employee or tenant under contract, without the written consent of the employer or landlord. At the option of the party injured a person violating the law may be either criminally prosecuted or held liable for double damages. Held unconstitutional as unreasonably interfering with the liberty of contract, and as giving a private party the option of declaring an act to be a public offense or a private wrong.

Labor legislation. Sexton vs. Newark District Telegraph Co. (New Jersey, February 25, 1913. 86 Atl. 451.) Elective workmen's compensation act sustained.

Labor legislation. St. Louis & S. W. R. Co. vs. Griffin. (Texas, February 12, 1913. 154 S. W. 583). A statute is valid which requires a corporation discharging an employee to furnish him on his demand a true statement in writing of the cause of his discharge. In the absence of a distinct statutory provision, the statement is not privileged. A similar statute had been held unconstitutional in Georgia. 94 Ga. 732.

Statutes—Operation upon existing contracts. State vs. Seattle. (Washington, May 6, 1913. 132 Pac. 45.) A workmen's compensation act applies to hazardous employments performed under contracts entered into prior to the time the act went into effect. The court states the principle that the police power overrides contracts, without qualification, but it does not appear that in the present case the contract had any specific reference to compensation for injuries.

Statutes—Certainty. Railroad Commission vs. Grand Trunk Western R. C. (Indiana, February 18, 1913. 100 N. E. 852.) A statute makes it unlawful for any railroad company to operate a train unless the railroad has in operation an approved block system for the control of train movements. The court holds the statute is not sufficiently definite for enforcement. Yet apparently "approved" is construed as meaning "approved by the commission."

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BOOK REVIEWS

Das Oeffentliche Recht der Vereinigten Staaten von Amerika. By ERNST FREUND. (Tübingen: J. C. B. Mohr, 1911. Pp. 386.)

This book which is the twelfth in a series of works on the public law of modern countries, edited by the late George Jellinek, Paul Laband and Robert Piloty, presents several features of especial interest.

In the first place it is the only work, so far as the reviewer knows, written in German by a scholar who has a complete knowledge of both systems of government and public law, that of the United State and that of Germany. This knowledge is used throughout the book in making our federal governmental system which has so much that is similar and yet so much that is fundamentally different from that of the German state, unusually intelligible to German readers.

In the second place the method of treatment differs from that found in the standard American treaties on the constitutional law of the United States. The work is divided into two parts, the first of which treats of the organization and legal principles underlying our systems of government, state and national. The second deals with the functions of government, that is the activities and agencies through which the government actually operates.

The first of these two parts covers in general the ground treated of in the American works mentioned. The author begins with a consideration of the constituent elements of the Union, comprising its territorial expansion and extent, the framing of the Constitution, the origin and general characteristics of the state constitutions, and the organization and government of the territories. Then follows a clear and concise treatment of the federal character of the Union. With the real German genius for systematic and logical treatment, which characterizes the work throughout, the author deals in this portion first with the Union as a federal state, then with the legal position and interrelations of the individual States in the Union, then with the relations between individual States and the federal government, and finally with the manner and means by which the supremacy of the federal government in its sphere is secured. It is particularly in the treatment of this

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complicated subject that illuminating comparisons with other federal systems, especially those of Switzerland and Germany are entered upon.

After an exposition of the fundamental civil and political rights, under the federal and state constitutions, Professor Freund takes up the organs of government. The doctrine of the separation of powers and its application in our governmental systems is first considered, and then follows a description of the three branches of government. The customary method of discussing the departments of the federal government in succession and then those of the state governments is not followed in this work, where the description of each of the federal departments is followed immediately by that of the corresponding department in the state governments.

A brief treatment of local government, both rural and urban, completes the first and more strictly constitutional law portion of the work. Throughout this part of the work the text is supplemented by footnotes containing not only an abundance of references but considerable illustrative material in the way of court decisions, legislative acts, executive orders etc. The text itself includes more than mere description and exposition, for it gives brief discussions of controverted points in our constitutional law, and comprises considerable critical material as well as an indication of recent tendencies and probable future developments.

It is particularly in the second part of the work however that an advance is noted over the ordinary treatises on our public law, for here a comprehensive survey is made of the actual activities of our governments.

Beginning with a consideration of our systems of civil and criminal law, the author treats in turn the administration of foreign affairs, military matters, and federal, state, and local finances. Then follows a description of the governmental activities of state and nation with regard to private undertakings in the realm of finance, in the matter of transportation, and in business and industry. The administration of the post-office, labor legislation, the furtherance of agriculture and the conservation of natural resources, the protection of the public safety, the care of the poor, public education, and the relation of church and state are all dealt with in this second portion of the book, and give an excellent bird's eye view of the everyday activities of the governments whose organization and legal powers are considered in the first part of the book.

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There is no question but that this book will serve its purpose admirably in giving to the German reader a scholarly and yet readable presentation of our governmental systems. It is to be hoped that the significant and interesting developments that have occurred in the two years since the book appeared, especially in our national government, will soon receive the same satisfactory treatment in a new edition of the work.

HERMAN G. JAMES.

The Legal Position of Trade Unions. By HENRY W. SCHLOESSER and W. SMITH CLARK. (London: P. S. King and Son, 1912. Pp. xxii, 268.)

One purpose of the authors of this book evidently was to furnish a complete exposition of the present English law of trade unions, and, so far as is known to the reviewer, the book is more comprehensive than any other on the subject except the recent book of Greenwood, *The Law Relating to Trade Unions* (1911).

The English law of trade unions, historically viewed, and as it stands today, is very interesting, but it is largely based on statutes. This book sets out the statutes in such detail, giving formal matters as important a place as substantial matters, that it is certainly not the book for one who wishes to get a general view of the subject. And this treatment sacrifices so much in clearness of exposition that it seems to the reviewer to constitute a defect for the purposes of use by the English lawyer or trade union official.

Evidently for the purpose of giving this general view, an introduction containing an historical account of the law and a sketch of its main features as existing, is prefixed. The historical account of "the struggle of the trade unions for legal recognition and freedom of action" is sufficient for the purposes of an introduction, but it is not comparable to Stephen's account in chapter xxx of his *History of the Criminal Law*, or to Dicey's account of the period from 1800 down, in his *Law and Opinion in England*. The sketch of the present law is not full and accurate enough to be of much value by itself, though a very accurate account can be written in fourteen pages, as witness Mr. Pease' article in the *Columbia Law Review* for November, 1912.

The discussion of "the legal personality of a trade union," which includes the interesting question of the powers of contract and liability in tort of these societies which are neither corporations nor voluntary

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associations, is found in the body of the book, and though it is good, it is not nearly as clear as Mr. Geldart's exposition in his article in the *Harvard Law Review* for May, 1912, where he explains the law with reference to the common law of voluntary associations, i.e. the law of contract, agency and trust. The third part of the subject deals with "the limits of trade union interference with the conduct of the employer's business," which includes the law of torts and crimes as regards strikes, boycotting, picketing and the like. The quoted headings are not taken from the present book, but from Assinder's *Legal Position of Trade Unions*, and seem to constitute the most logical division of the subject. The present book makes a slightly different division, possibly on account of its detailed treatment. Assinder's small volume (second edition, 1912) discusses the history and the main questions of the present law, and while excellent so far as it goes, seems to me to discuss inadequately the effect of the Act of 1906 and does not discuss the question of restraint of trade, in connection with the enforceability of the rules of the society. Greenwood's volume is quite comprehensive but seems to the reviewer very diffuse and lacking in generalizations, in which respect the present work is preferable.

There seems to the reviewer to be some inaccuracies in the book which can be specifically pointed out.

In the introduction, it is stated on page 6: "The common law doctrine of restraint of trade constituted illegal all combinations of workmen to regulate the conditions of their work." This point is quite a controverted one, however, and to lose sight of this is to interpret erroneously all the cases in chapter iv, on restraint of trade. Again, on page 8, R vs. Byderdick, R vs. Selsby, and the Glascow Cotten Spinners' case are spoken of simply as prosecutions for conspiracy, and give the impression that the conspiracy consisted in the combination to raise wages, whereas Bykerdick's case was a strike against nonunion men, Selsby's case involved unlawful picketing, and the Cotten Spinners' case acts of violence. And again, on page 12, it is stated that "one of the results of their status of illegality was that all resort to the courts for the purpose of preserving or recovering their property or funds was denied to them," but this is not correct in view of R. vs. Blackburn, 11 Cox, C. C. 157, and R. vs. Dodd, 18 L. T. 89.

The authors maintain (p. 60) that the oversight in the act of 1906, in not legalizing picketing for the purpose of communicating information when there is no trade dispute will result in the unlawfulness of such picketing. The case is, of course, a rather improbable one, but such

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picketing is lawful at common law, and the Ward Lock Company case (1906-C. A.) seems to hold that picketing for the purpose of peaceful persuasion was lawful, thus virtually overruling Lyons vs. Wilkins.

On page 64 "Compulsion" under the conspiracy and protection of property act, 1865, is explained as if it were a substantive offense. The offense is "watching," "besetting" and "following" for the purpose of compulsion. The cases cited, Peto vs. Apperley, Hale vs. Livingstone and Trollope vs. London, etc., Federation, did not involve the specified acts and were not decided under the statute.

The discussion of liability for interfering with contractual relations is rather pre-digested. One cannot get a clear idea of Allen vs. Flood and Quinn vs. Leatham in a sentence, and some of the statements are very confusing, if not incorrect. Thus, it is said on page 70: "It is unlawful at common law, by illegal means, to prevent persons from entering into contracts as to the employment of labour or capital if there be no sufficient justification." Illegal means ordinarily denotes means illegal per se. Yet in explaining what is "justification," it is stated (p. 71): "Without malice to protect one's own legitimate trade or labour interests may be a justification." But this can never be a justification if the means are illegal, and a statement to this effect is found on page 73 in another connection.

Chapter lv, on "Restraint of Trade," involves the question, when will benefit rules be inforced? which, under the act of 1871, rests on the question, is the society legal or illegal at common law? For if the society is illegal, the act provides that such rules cannot be "directly enforced" by the courts. The authors give an elaborate forty page analysis of some nine cases on this point. The lack of a statement of the facts of each case constitutes, however, a serious defect. The analysis is not convincing and a reading of the cases leads the writer to a different conclusion from that of the authors. It seems clear that a rule containing an agreement on the part of members to strike when called out by an organ of the union is sufficient to render the society illegal as in restraint of trade. This is the one clear and unfailing criterion, and runs back to Hilton vs. Eckersley, in 1853. Rules forbidding piece work and the like may render the society unlawful. If the benefit funds and the trade funds are separate, the benefit rules probably would be enforced. In regard to the main criterion, the authors argue that if striking is legal, they cannot see why compulsory strike rules should not be legal. They overlook the fact that the question asked is, not whether such rules are legal in the sense of criminal, but whether

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they are contracts in restraint of trade and as such unenforceable The benefit rules are not enforced because they are regarded as inextricably mixed up with illegal rules.

Chapter v, which is again an eleborate analysis of the cases on what is a direct enforcement, is unconvincing for the same reason as chapter iv.

The explanation of the change of definition in the act of 1876 (pp. 22–23) seems to me erroneous. Bulcock's case is cited, on page 70, under cases involving procuring breaches of contract, but there was no breach of contract in that case. There are more or less obvious misstatements on page 7 (parentheses in the wrong place), page 48, ("unless" should be "if" on line 14), page 52 (paragraph 2 is an ambiguous statement of §10 of the act of 1876).

W. B. HUNTING.

A History of French Private Law. By JEAN BRISSAUD. Translated from the second French edition by Ropelje Howell. (Boston: Little, Brown and Company, 1912. Pp. 922.)

This is the second volume to appear of the Continental Legal History Series published under the auspices of the Association of American Law Schools and under the direction of an editorial committee of which Dean Wigmore is chairman. Dean Wigmore furnishes a short introduction, as does also Mr. W. S. Holdsworth. The reviewer was at first surprised that the work of Esmein or of Viollet, which are probably better known to American stuents than is Brissaud's history, had not been selected for translation. The choice of the editorial committee is, however, well justified. The work deals far more comprehensively with the internal development of the law, that is, with the transformation of its substantive principles, than does the work of Esmein which, indeed, is devoted in very large measure to the external or institutional history of the French law. If the present volume of Brissaud were to stand alone, the reader would feel seriously the lack of an adequate description of French judicial institutions and their modes of operation but, so far as this need has not been supplied by the first volume of the series *A General Survey of Events, Sources, Persons and Movements in Continental Europe*—it will undoubtedly be met in the translation which is promised of Brissaud's *History of French Public Law*. The work under review, while resembling in scope and method the history of Viollet has the decided superiority over that work, to English and American readers, which Dean Wigmore points out in his introduction, that it

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abounds with comparisons with English legal doctrines, and constantly calls attention to common starting points of development. Not only are English records and authorities freely used but German, Italian, Swiss and other original and secondary sources as well. This comprehensiveness of M. Brissaud's scholarship is equalled by its exactness and intelligence. It does not fall within the scope of this notice to attempt a detailed estimate of the work under review and it can, therefore, only be said again that the series to which it belongs should, and undoubtedly will, furnish a very great stimulus and aid to the science of historical and comparative as well as analytical jurisprudence in this country.

War or Peace. By HIRAM M. CHITTENDEN. (Chicago: A. C. McClurg and Company, 1911. Pp. 273.)

As a retired brigadier-general of the United States army, the author of this book commands the attention which is justly accorded to a union of experience and reason, of theory and practice. Having participated in actual warfare and been thoroughly imbued by its traditions, he is impressed both by the vastness of the modern ambition to abolish it, and by the part which it is alleged to have played in the advancement of civilization. He has not been able to strike the balance of history and to decide definitely whether war has been on the whole an indispensable, or only an accelerating, or indeed a retarding, factor in progress; but he is thoroughly convinced that this is a purely academic question, and that whatever war did or did not accomplish in the past, it has outlived its usefulness. For, he argues, most of the inferior peoples are now under the civilizing control of the great powers, and only the exercise of police power is required for them in the future. Again, war never has promoted the survival of the physically fittest, and even if it could do so, it would be too atrocious a means for humanity to resort to for the accomplishment of this purpose. Material progress, in the direction of invention, road-building, geographical knowledge and civil engineering, he claims to have been promoted by war or by preparations for it, but asserts that the activities of peace have accomplished far greater results along these lines. On the religious, artistic, literary and "popular amusement" aspects of warfare, our author's conclusions are decidedly mixed; but he is forceful and even eloquent in denouncing war as the font of justice and the only or chief exponent of patriotism; while the sixteen pages which he devotes to an analysis of the war vir-

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tues and a contrast of them with the peace virtues are worthy of being placed in every soldier's manual and of being taught to every civilian who takes a sickly sentimentalistic view of armies and battles.

Having shown the fallacy or obsolescence of the familiar sanctions of war, General Chittenden turns to a discussion of the moral damage, the physical destructiveness, and the economic burden of warfare, and draws up an indictment against it from these points of view which is powerful in itself—in its use of facts and figures—and which is the more impressive in the eyes of pacifists and militarists alike because it represents the seasoned convictions of an experienced soldier.

"Armed peace," or preparation for war, especially as exemplified by Germany and France, is next subjected to an analysis, searching and very suggestive, the result of which is the author's conclusions that military preparation does not assure either a successful war or the maintenance of peace; that such preparation does not "insure" against war either in the prevention of it, or in compensating for its destruction of property, but on the contrary often increases the danger of war and represents a premium of about 115 %; that national prosperity and trade expansion do *not* arise from large armaments or from coast and frontier defences, while the alleged necessity of maintaining a large navy for the protection of commerce arises from pure emulation of one's neighbors and the failure to adopt the American proposition to abolish the capture of private property in maritime warfare. But having thus demolished some of the ordinary arguments in favor of military preparation, our author insits that a "big navy," an "adequate army" and the fortification of the Panama Canal, are justifiable on *our* part, for purposes of "defence" against Japan and Germany, and of bargaining with or influencing the other powers toward simultaneous disarmament.

The positive reasons why war is still possible are stated to be commercial imperialism, including territorial expansion, and tariff restraints upon trade; while the negative reasons why war cannot be immediately abolished are stated to be national reluctance to relinquish any portion of national sovereignty—as illustrated by the reservations made in arbitration treaties—the undesirability or impossibility of having an international sheriff, and the opposition to judicial methods of settling international differences exerted by Europe's four million professional soldiers and their adherents.

Five means of abolishing warfare and preparations for it are reviewed: first, national disarmament by separate action, which our author re-

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jects as impracticable even on the part of the United States, because of our double coast line and the necessity of defending our vital interests, such as our territorial integrity, our immigration policy and the Monroe Doctrine; second, reliance upon a volunteer soldiery—which is regarded as insufficient because of the time required for equipment and training; third, arbitration, and fourth, international conferences, especially those held at the Hague—which means are indorsed as useful, but are held to be insufficient; and lastly, a world-court to settle disputes and a world-government to prevent them from arising—which means the author considers entirely adequate, and which he hopes for from the future.

The book concludes with an alluring picture of the "millenium of peace" which will begin with this world-federation, which will usher in the cessation of war, gradual disarmament, the transformation of military academies into civil service schools, the abolition of tariffs, the unification of weights, measures, coinage, language and law, the disappearance of tricky diplomacy, the rapid development of backward nations, and an enormous increase in the industry, public works and moral development of the progressive nations of the world.

Although the final impression left upon the mind of the reader of this book is one of some inconsistency and indefiniteness, and although it will be both praised and condemned by bellumist and pacifist alike, it is an interesting reflection of the transition stage between militarism and judicialism in which the world finds itself at present, and it is on the whole a contribution of genuine merit toward the solution of the greatest problem of our time.

WM. I. HULL.

The Republican Tradition in Europe. By HERBERT A. L. FISHER. (New York: G. P. Putnam's Sons, 1912. Pp. xii, 363.)

This book embodies in substance the lectures delivered at the Lowell Institute in 1910, and is an attempt to describe in a general way the evolution of republican thought and practice in Europe from the end of the Roman Empire to the present. With the exception of a treatise by the great Spanish champion of republicanism, Emilio Castelar, it is, I believe, the only book dealing with the republican movement in the old world.

Mr. Fisher starts out with a review of mediaeval thought and tradition, observing that the political conditions of the middle ages, when

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war was chronic, communication difficult and social inequality ingrained in the necessary institution of feudalism, were unfavorable to the growth of republican sentiment. The political theory of the time bears witness to a general belief in the necessity and divinity of Kingships and democratic protest against monarchy was sporadic and unorganized. The two greatest political thinkers of the time, Machiavelli and Guicciardini, were both opposed to popular government and in practice it made little or no headway. The Protestant Reformation of the sixteenth century was a great dissolvent of European conservation and in the writings of Milton, Languet, Althusius, Sidney and Harrington republicanism in one form or another found able defenders who were ready to repudiate the principle of monarchy. European republicanism, which ever since the French Revolution has been mainly a phenomenon of the Latin races, was, in fact, a creation of Teutonic civilization in the age of the Sea-beggars and the Roundheads. Throughout the period following the reformation the monarchial faith of the Romance nations was firmly maintained with hardly an exception. The philosophers of the eighteenth century made efficiency rather than education the test of good government and as monarchy met more nearly this test they preferred it to the republican regime.

Naturally the republican movement in France occupies the leading place in a treatise of this kind, and to it Mr. Fisher devotes several chapters. The French Republic, he says, was a new phenomenon in the history of the world, those which preceded it being merely ideal creations, or civic, federal, or aristocratic states, or combinations of all three. The republic of 1792 was centralized, anticlerical, military or propagandist, albeit full of humanitarian ideas. The second republic was established not so much out of hostility to monarchy as an attempt to break down Guizot's dictatorship, enlarge the franchise, rid the body politic of corruption and open the way to social reform. But the country was not prepared for it; it was founded in illusions and errors and soon collapsed. But it was not without permanent political effect on the traditions of the country, for it brought universal suffrage, introduced the presidential system and laid the foundations for a system of free secular education. The third republic, although apparently a permanent creation, rules over a divided nation. The war between it and the Catholic church is truceless, but the republic has succeeded in capturing the schools, dissolving the congregations and disestablishing the church.

In conclusion Mr. Fisher remarks that unquestionably the cause of

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republicanism has made progress in Europe since 1870. This is due partly to the increased level of intelligence and character among monarchs themselves (witness Victoria, Edward VII, William II of Germany, Francis Joseph of Austria and Christian IX of Denmark, not to mention others). The importance of social and economic problems has also tended to divert the public mind away from the consideration of the question of the organization of the executive power. The growth of imperalism has also tended to strengthen the monarchial principle, for only a monarch can secure the attachment and loyalty of colonial peoples. The preference exhibited by the people of Norway in 1905 for a monarchy rather than a Republic is an indication that the monarchial principle is still popular in Europe. Mr. Fisher's book is, on the whole, a very interesting survey of a movement which has heretofore not attracted the attention of historical students. He shows a clear grasp of the subject and the story is told in a style not without real literary charm.

JAMES W. GARNER.

War and the Private Citizen: Studies in International Law. By A. PEARCE HIGGINS. (London: P. S. King and Son, 1912. Pp. 200.)

This is No. 27 in the series of monographs edited by Hon. W. Pember Reeves, director of the London School of Economics and Political Science, by writers connected with that school.

The work is an octavo of 200 pages. Chapter 1 devotes 70 pages to "The Laws of War in Relation to the Private Citizen."

This portion of the book is quite general in its type with limited citations and some of them to minor authorities. Most of the observations are obvious and commonplace, but the latter portions of the chapter show greater vitality as where forced guides, requisitions of personal services, and of goods are discussed and disapproved. The arguments would have been strengthened if the facts adduced had been definite and precise and supported by citations. For instance, when Dr. Higgins discusses as results of war the "untold miseries to men, women and children who take no part in battles" (p. 65), he refers to the recent experiences of the inhabitants of Tripoli, Cyrenaica and the Arabian coast towns, but leaves us to imagine or recall those experiences as we may, without fact or reference.

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The second chapter of but 16 pages is devoted to "Hospital ships and the Carriage of Passengers and Crews of Destroyed Prizes."

The third of 13 pages to "Newspaper Correspondents in Naval Warfare."

The fourth of 52 pages to "The Conversion of Merchant Ships into Warships" and the fifth and last of 25 pages to "The Opening by Belligerents to Neutrals of Closed Trade."

The latter four chapters are animated and fairly adequate discussions of living questions. The citations are not too numerous, not as much legal and judicial as we could wish, perhaps because such citations are hardly yet available on these new topics. The American citations are quite frequent and especially to the publications of the United States Naval War College.

The chapter on "Hospital Ships and on Newspaper Correspondents in Naval Warfare" were first published in the *Law Quarterly Review* and *Die Zeitschrift fur Völkerrecht und Bundesstaatsrecht* and the last chapter on opening "Closed Trade" was suggested by the failure of the Naval Conference of London to reach an agreement on the subject.

Mr. Cohen commends the last two chapters and thinks Dr. Higgins' arguments and observations deserve serious consideration.

In these chapters the belief is expressed that "both the Second Hague and the London Conferences were in the main belligerent conferences in the sense that belligerent claims won diplomatic victories over those of neutrals. Neutral rights reached their high-water mark in the declaration of Paris" (p. 159).

Dr. Higgins strongly defends the rule of 1756, saying "Every assistance given to a belligerent by neutral merchant ships tends to the lengthening of war, the increased suffering of the combatant and the civilian population and the greater dislocation of the trade of the world."

The connection between the several chapters is not as intimate as it might be and the book impresses the reader as a rather casual collection of magazine articles written on current topics without the ripest reflection or research.

However the four later chapters are certainly stimulating and modern discussions of the matters mentioned, well worth examination and although not final, must be deemed meritorious contributions to questions now up for settlement.

CHAS. NOBLE GREGORY.

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History of the Supreme Court of the United States. By GUSTAVUS MYERS. (Chicago: Chas. H. Kerr and Company, 1912. Pp. xviii, 823.)

This work is intended to portray the Supreme Court of the United States as the effective instrument, in the development of certain lines of American law, of dominant capitalism. "Throughout its whole existence," we are informed by the author in his preface, the court has "incarnated into final law the demands of the dominant and interconnected sections of the ruling class." On the other hand the membership of the court has, we are relieved to learn, been personally "peculiarly free from venal corruption in an age when such corruption was common if not continuous."

The value of the work consists in the emphasis which it puts upon the personal connections of members of the Supreme Court before their appointment as influencing their view of the law after appointment. Sometimes such factors are plainly seen to have been determinative, as for instance in accounting for the remarkable position taken by Chief Justice Chase in Hepburn vs. Griswold. Instancing the usual charge that Chase had the presidency on the brain, Mr. Myers continues very aptly: "But there was another factor . . . . Infallibly a man's early economic interests, associations and training, long persisted in, have a determinating influence on his views, and conspire to sway or prejudice him in one direction or another. As a young lawyer and in middle life Chase's self-interested associations were mainly with bankers and as an older man he was constantly as secretary of the treasury in personal touch with the foremost bankers of the country. Nearly his whole adult life, it may be said, was—so far as his personal interests and connections went—an unbroken association with bankers and a corresponding susceptibility and flexibility to their interests." Also, some of the facts bearing upon the personal associations of more recent members of the court, which Mr. Myers has collected, are highly suggestive (chs. xiii–xvi).

But of course Mr. Myers must ride his hobby to death. Thus he traces results to the peculiar associations of a particular judge which are more readily explained by views held by society at large. He has indeed not the least appreciation of the way in which theory may affect the outlook, not of judges alone, but of all men, and far less has he any appreciation of the real strength of established legal doctrine. The law to his view is not simply malleable, it is nothing more than a nose of

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wax. More irritating still however is his deliberate refusal to distinguish between law which, by furthering a possible class interest, benefits society at large and law designed to bolster a class interest at the expense of society—in short, his abandonment of all standards of justice save that set up by laborite Socialism, which is the interest or supposed interest of labor. But if the exigencies of a present-day class-struggle alone determine right and wrong, why should Mr. Meyers be so careful to insist upon the personal rectitude of the judges? The truth is that he repeatedly abandons his pose to insinuate the worst. (vd. pp. 261–61, 433–37, 499, 504–05) Also, as might be supposed, since his own standard is of such modern contrivance, the judgments he passes are sometimes strongly flavored with anachronism (vd. p. 397). Errors of statement are sometimes glaring (vd. pp. 301, 303, 469, 483, 504–05, etc.) Nor is our author chargeable with an over-developed sense of humor. On pages 260–61 is cited a letter of Story, at the time a practicing attorney, in which the writer says that often he dines with the judges of the Supreme Court. "When Story wrote this letter, little did he think of what historical importance it would be," comments Mr. Myers. How frail a thing must judicial virtue be! Equally ridiculous is the author's attempt (pp. 479–80) to classify Justice Clifford as one of the railroad contingent on the court, on the ground that Clifford had a son-in-law who was the son of one of the "very foremost capitalists of Maine!" Sometimes his thesis that the judges conceive the public interest only in the light of a class interest falls down. Thus Field, who is classified as a railroad judge, sides with the banking interest in Hepburn vs. Griswold. (p. 504). This fact Mr. Myers endeavors to explain away, but the decision of the court in Munn vs. Illinois he discreetly passes over in silence. Similarly, he ignores substantially the whole body of doctrine of the court in interpretation of the commerce clause, though this branch of our constitutional law undoubtedly represents the greatest single contribution of the court. On the other hand, two-fifths of the work is filled up with land-fraud cases. It has to be admitted that the story of its handling of these cases does not comprise a very brilliant page in the history of the court. But the blame lies primarily with congress, which could have remedied the law at any time. The case is of course that, although the Constitution makes the Supreme court a judge of fact as well as of law, whenever the Court has been confronted with the task of deciding on facts it has scamped the job.

Coming down to modern issues, Mr. Myers has little use for the

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interpretation which the court has, in these latter days, imposed upon the fourteenth amendment, though his criticism of it is naturally quite innocent of logical or historical analysis. More disappointing is his failure to point out the demonstrable fact that this interpretation was secured, in part at least, by the promotion to the Supreme Court of judges who had favored it in lower courts, as against those who had disfavored it. But at one point our author finds the court "ultra-progressive," namely, in the attitude which he thinks he finds it taking toward monopoly. At this point he becomes fairly eulogistic: "In reality," he writes (661), "the Supreme Court in the specific point in question was the most alert, adaptable, ultra-progressive institution in the United States. Frosted with heavy years most of its members truly were; but in depth of mind, in clarity of vision and grasp of affairs no body of men were less archaic or (in the particular referred to) more keenly responsive to the altering conditions as required by the dominant division of the ruling class. This was their one ability—an ability to be estimated and appreciated at its high historic worth." Notwithstanding its unfortunate economic training the Court has refused to stand in the way of industrial evolution, has declined "to interfere with the orderly transition of society from an older outworn, crumbling stage to a newer, more modern era."

While suggestive, the volume as a whole leaves one strongly with the impression that Laborite Socialism enjoys too recent a revelation to fit its devotees for the task of writing history as that task is conventionally conceived.

EDWARD T. CORWIN.

The Corporate Nature of English Sovereignty. By W. W. LUCAS. (London: Jordan and Sons, Limited, 1911. Pp. xvi. 91.)

The reader who expects to find in this book any application to England of a general theory of sovereignty will be disappointed. It deals with the question only as a branch of English law. The author describes his own method in saying that he "has taken the liberty of applying appropriate modern descriptions to early institutions which existed only in crude or innominate forms, as this is a practice which has been adopted by other writers including many of the highest eminence." Thus the "appropriate modern description" of the Anglo-Saxon government seems to depict a state where all the people were *entitled* to be present at the meetings of a Witan whose power of electing and deposing kings

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is unquestioned. The author seems to be wholly innocent of any knowledge of the recent important studies on these matters by his fellow Cantabrigian, Mr. H. M. Chadwick. Again applying the "appropriate description," we find that after the Norman conquest and up to the thirteenth century "the tenants-in-chief, who constituted the political *personnel* of the nation, were all *entitled* to attend the commune concilium and this *right* was confirmed by the Great Charter." It follows, of course, that William and many of his successors often ordained and established law "in an irregular manner," and in general the King's power was increased "in a most unconstitutional manner." The irregularity and unconstitutionality of all this is unquestioned, if "the fact is admitted on all hands" that "the kingship is now and always was *limited.*"

The ultimate conclusion arrived at by this method is that "the English Sovereignty" is and always was "co-operative." That in legal theory the king never could act alone in any department of state activity, but only in conjunction with other organs of the State which were always more or less independent of his control.

There is certainly some truth in the statement that the king's power in England was never limitless, but it is a quite different matter to lay down the rule unhesitatingly that all the practical hindrances to a feudal king are necessarily *constitutional* limitations. One wonders when the Kings of France ceased to be "limited monarchs."

The method of applying "appropriate modern descriptions" to "innominate forms" is essentially unsound. It is based on the fundamental error, pointed out long ago by Maitland, of mistaking the indefinite for the simple.

Mr. Lucas quotes with seemingly unconscious candor Sir William Anson's letter commenting on his theory as follows: "If by coöperative sovereignty you mean that according to the Theory of the Constitution the King never acts, and never has acted alone, I think that what you are asserting is a commonplace in constitutional history. But I think also that anyone who propounded this theory to William I, or Henry II, would have found his constitutional studies cut very short. Henry VIII would probably have shown him that there were constitutional methods of enforcing the King's personal inclinations, and if he had suggested to William III that he had better follow the lines of the constitution in his dealings with our foreign relations, I think that contemptuous disregard would have been all that befel him."

C. H. McIlwain.

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The Irish Nationality. By ALICE STOPFORD GREEN. (New York: Henry Holt and Company, 1912. Pp. vi, 256.)

The End of the Irish Parliament. By JOSEPH R. FISHER. (London and New York: Edward Arnold and Longmans, Green and Company, 1911. Pp. xii, 316.)

These two books, although covering the same ground, in part, differ quite radically in character. *The Irish Nationality* is one of the volumes of the Home University Library of Modern Knowledge and traces the development of Irish nationality from the earliest times practically to the present. The first chapter is on the "Gaels in Ireland" and the last is entitled "Ireland under the Union." The book is a popular, readable sketch, written in a vein more sympathetic than critical. It sets forth the early civilization and learning of Ireland in glowing terms and makes large claims for early Irish missionary zeal. While Ireland undoubtedly has a creditable record in this respect, some of the claims appear excessive. They are frequently made, however, in general terms, and are, at times, matters of judgment which cannot well be disputed. The book condemns the methods used in bringing about the Union with England and asserts that the act "lacked all moral sanction."

While the discriminating student will find rather too much of sentiment in the former book, the latter will impress him as being almost entirely devoid of sentiment. It also justifies the passage of the act of union and defends the means by which the act was pushed through.

Mr. Fisher's book covers about a century and a third of Irish history —from the beginning of the vice-royalty of Lord Townshend in 1767 to the union with England in 1801. The last chapter of the book deals with the passage of the act of union, while the earlier ones give an outline of the events leading up to that important act. Mr. Fisher claims that the Irish parliament was not representative of the people and that the Irish were willing to have their country annexed to England. He also claims that the Irish parliament was corrupt and that the only way out of the dilemma lay in union. He frankly admits that votes to bring about the union were bought, but at the same time he defends the method of passage. "But in spite of all," he says, "the old objection against the union will be raised that the majority in its favor was 'bought.' Yes; it was bought, as every majority in the Irish parliament for a century past had been bought. The majority was bought because it was there for sale, and there was no way round, except the

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Cromweltian or the Napoleonic." A little later this rather remarkable statement is made: "One thing certain is that in no shape or form can the buying up of these seats be regarded as bribery." While the ethical standards of the eighteenth century were not as high as those of the present time the reader will hardly be convinced by Mr. Fisher's defense of Castlereagh and others instrumental in the passage of the act of union.

T. F. MORAN.

The Governments of Europe. By FREDERIC AUSTIN OGG. (New York: The Macmillan Company, 1913. Pp. xiv, 668.)

The author of this work, is assistant professor of history in Simmons College, Boston. In addition to works on American and mediaeval European history, he has published a number of essays dealing with political and economic themes in such periodicals as the *Review of Reviews*, and is the author of a study of *Social Progress in Contemporary Europe.* He therefore brings to this work the authority of experience and matured judgment.

In the preface we are told that while he hopes the book will prove useful to such general readers as seek such information as it contains, it was "conceived and planned primarily as a text for use in colleges;" and that its content has been determined mainly by three considerations; first, to afford an opportunity for the comparative study of political institutions; second, to present enough of the origins and growth of these institutions to meet the need of readers not familiar with recent European history; and third, to include some treatment of the political parties and the institutions of local government.

Great Britain has been given 143 pages, Germany 96, France 64, Italy 52, Switzerland 37, Austria-Hungary 75, the Low Countries 36, Scandinavia 50, and Spain and Portugal 40. The section devoted to Germany has 17 pages on "The Empire and the Constitution;" 13 on the "Imperial Government; Emperor, Chancellor, and Bundesrath;" 22 on the Reichstag, parties, and judiciary; 12 on the Prussian constitution; 18 on local government in Prussia; and 14 on the minor states of the Empire. This historical treatment of France begins with the revolution of 1789, and of other countries with the events which bear directly upon the present political organization of each. In other words the book deals with actual government rather than with constitutional history, a distinction which is too often ignored. If the author has

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seemed to incorporate too much history in any case, it is in that of Great Britain. Here he follows the roots of the constitution back into the period prior to the Norman conquest introducing the Witenagemot and other very early beginnings. On the other hand, events as late as September 1912 (p. 240) are given attention, and the treatment of each topic is brought down to the immediate present.

Such a work has been needed for at least a decade, and will now be welcomed particularly by those teachers who offer to undergraduates a course in comparative government and who have been using such works as Wilson's *State* or Lowell's *Governments and Parties in Continental Europe*. The first of these contains too much and the second too little, and both masterpieces are now enough out of date to be troublesome for the busy teacher who is unable to supplement them with intimate knowledge of current European affairs. Professor Ogg's book with Beard's *American Government* or Bryce's *American Commonwealth* will admirably meet the needs of such a course.

Professor Ogg's style has been influenced and not for the worse by the fact that he has written extensively for the general public as well as for the student, and his book can be called popular in only the best sense. He has dealt with facts rather than with opinions or judgments, leaving these latter to be supplied by the teacher. Here and there (pp. 223, 313, 366) when attention is called to the similiarity or contrast which exists between the governments of two countries, the purpose is not to go into political philosophy but to clarify the description of the government in hand. The scholarship of the book is admirable. On nearly every page appear foot-notes, in which are to be found references to sources, secondary treatises, handbooks, periodicals and compendia, well selected and in numbers large enough to satisfy the appetite of the most industrious reader. A real service has been rendered the college teacher of government.

EDGAR DAWSON.

The Treaty Making Power of the United States, and the Methods of Its Enforcement as Affecting the Police Powers of the States. By CHARLES H. Burr. (Philadelphia: The American Philosophical Society. Proceedings, vol. 51, no. 206.)

Mr. Burr's essay, which was awarded on April 20, 1912, the Henry M. Phillips' prize of $2000 by the American Philosophical Society, and which has since been published in its *Proceedings*, is a very scholarly

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piece of work, commensurate with the high standard always maintained by the learned society which made the award. There were nine essays subitted for the prize, and the committee of judges was composed of Hon. Jos. H. Choate, Hon. John C. Gray, Hon. J. M. Dickinson, Hon. Henry Wade Rogers, and Hon. James Brown Scott.

The author has handled his subject in a very succinct and thorough manner; his reasoning is for the most part cogent; the work shows a great amount of research, and the arrangement is admirable. The treatment of the historical development of the treaty making power, from the earliest debates in the constitutional convention, through the reactionary period under Chief Justice Taney, down to the present time is especially comprehensive.

After a detailed analysis of decisions, Mr. Burr thus summarizes his fundamental conclusions: First: A treaty provision, having such expressed intention, will of its own force, operate as a federal legislative act, and this principal obtains, even though the subject of the treaty provision be one committed by the Constitution to the legislation of congress. Second: Acts of congress and treaty provisions stand under the Constitution on an equal footing, and the last expression of the federal will, be it by statute or by treaty, must prevail. Third: treaty provisions may operate upon subjects not committed to the legislation of congress, and, when so declaratory of the federal will, they operate of their own force to annul the constitution or law of any State in conflict therewith. The question presented is whether an exception exists to the third conclusion, and specifically whether it be true that treaty provisions conflicting with the exercise of a State's police power, are beyond the power of the federal government, and consequently invalid. Mr. Burr answers this question most emphatically in the negative by saying that without qualification of any kind whatever, and without limitation by any possible definition of the treaty making power, a treaty provision, as the embodied manifestation of the federal will, is supreme over any and all State enactments made in the exercise of the police power.

Mr. Burr's views—extremely federalistic to be sure,—are believed to be sound. Speaking of article vi of the Constitution which recites that the Constitution, acts of congress and treaties shall be the supreme law of the land, Mr. Burr says that, "the political critic is capable in the interests of party of any brutality of interpretation," and were the question free from *political* significance, no effort, he thinks, would be made to escape the evident meaning of the words of this article of the

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Constitution. In this connection it is a noteworthy fact that Mr. Burr makes no mention whatever of the case of Marbury vs. Madison, which announced the principle, not fully debated, yet apparently accepted by a majority of the greatest minds in the constitutional convention, that an act of Congres may be declared void by the courts if contrary to the Constitution. Since the pioneer decisions establishing the absolute supremacy of treaties antedate Marbury vs. Madison, the opponents of Mr. Burr's thesis may, in the absence of a consideration by him of this case, belittle the binding effect of these first decisions. Again, after reviewing the decisions of the supreme court respecting the exercise of state police power, Mr. Burr admits that with the possible exception of the passenger cases, the cases which really establish the supremacy of treaties have been illustrations of conflict with acts of congress, and not with treaties, but he feels no hesitancy in resting his argument upon such cases as Gibbons vs. Ogden, because, as he says, no distinction exists by virtue of the sixth article of the Constitution between the equal and controlling supremacy of the treaty power, and the power of congress. This line of reasoning may seem at first blush to leave still unanswered the question: If treaties and acts of congress are of equal force and effect, and if the latter may be unconstitutional, why may not the former also be unconstitutional? If, for example, it would be unconstitutional for congress to legislate on divorce, or to provide for the intermarrige of whites and blacks in Virginia, or of Caucasians and Mongolians in California, why, it may be asked, would not a treaty which attempted to do these things be equally unconstitutional?

While Mr. Burr refrains from a consideration of these more difficult and hypothetical facts, and confines his discussion to the adjudicated cases, he would doubtless agree that such a treaty would be unconstitutional, because, as he explains in his introduction, a colorable exercise of a power is not a valid exercise of the power. "To the minds which framed the Constitution and within the intendment of that instrument, treaties must only contain provisions which in the usual and normal intercourse of nations, should properly become the subjects of treaties. "It would seem to be unnecessary, if not misleading," Mr Burr continues, "to seek any further reason why a treaty may not make the President the presiding officer of the supreme court, or deprive the State of Nevada of its senators." But, once having determined that a treaty is a treaty within the meaning of that word in international usage, it is supreme. As Chief Justice Marshall said, the power to tax is the power to destroy, but the possible abuse of a power is no argument against its existence,

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once the clear intent is found to create the power. The real rest of the supremacy of treaties, therefore, lies beyond the mere words of the Constitution, albeit the treaty power rests upon grant from that instrument and not upon sovereignty, for as Mr. Burr explains, the basic fact of the problem is "that the treaty making power is in its essence a power to deal with parties—all other powers granted to the Federal government or reserved to the States, are powers to deal with *subjects*." A treaty is a contract made with another sovereignty. The power thus to contract must necessarily be unrestrained, otherwise our government would be rendered powerless in its international relations, a condition of affairs which existed under the confederation and which the framers of our Constitution so zealously sought to remedy.

Mr. Burr's closing discussion of the methods of enforcement of the treaty-making power as affecting the police powers of the States is particularly opportune, in view of recent events in California. What he says is believed to be sufficient to dispel any existing misapprehension as to the inherent power of the Federal Government to insure the enforcement of treaty provisions, and in this connection he offers a wise suggestion to amend certain sections of the revised statutes, so as to cover treaties.

WILLIAM C. COLEMAN.

The Old Colonial System, 1660–1754. By GEORGE LOUIS BEER. *Part I. The Establishment of the System, 1660–1688.* In two volumes. (New York: The Macmillan Company, 1912.)

Mr. Beer's volumes offer very little of interest to the student of political science, except so far as the latter is concerned with the economic backgrounds of his subject. The treatment here given of the old British colonial system is everywhere commercial and financial and the author expressly excludes from his view the political and constitutional aspects of the system as foreign to his purpose. He states, and rightly, that British colonial policy was essentially economic in character and that any presentation of the application of that policy in the colonies must concern itself first of all with trade, commerce, and finance. In his grouping of the colonies he substitutes for the customary classification based on internal political organization one determined by the place which the colonies occupied in the self-sufficing empire, somewhat after the fashion of the eighteenth-century distinction between bread and sugar colonies, with the southern boundary of Pennsylvania mark-

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ing the dividing line. Only incidentally does he recognize the importance of political factors.

At the same time Mr. Beer cannot wholly avoid reference to political things. He acknowlecges that even in the royal colonies such political disturbances as Bacon's rebellion in Virginia hampered the efficiency of the administrative system and interfered with the enforcement of the laws. In the corporate and proprietary colonies, he agrees, the difficulties that England met with in the application of her policy were fundamental and in the fullest sense of the word political. The quarrel with Massachusetts after 1660 was due in large part to the determination of that colony to remain a politically independent commonwealth and to ignore England's commercial requirements, denying to the mother country more than a nominal authority. The complaints against both Massachusetts and Connecticut were political as well as economic, and readers of Randolph's reports and Gershom Bulkeley's *Will and Doom* will feel that in Mr. Beer's study of the system in New England the political status should have had a larger place. The revocation of the Massachusetts charter in 1684, however much due to economic causes, was a political event, as it marked the first definite advance in the extension of imperial control over the colonies as a whole.

To Mr. Beer the "Colonial System" is a strictly economic affair and he has interpreted it in strictly economic terms. In one sense he is justified in so doing, for he sees only its economic aspect and disclaims all intention of writing a political history of the colonies. In another sense he is without justification, for the student has the right to demand of a work bearing such a comprehensive title something more than a disquisition upon trade, commerce, customs, revenues, and the slave trade. The British colonial system concerned the executive, administrative, military, and judicial organization of the royal colonies and the maintenance of peace and harmony within their borders. It embraced also land distribution and the accompanying incidents of tenure, and it concerned itself with important phases of ecclesiastical activity. It had a necessary and intimate connection with legislation and the execution of the laws, with grievances and appeals, with commissions and instructions to the governors and others, and in general with the exercise of the royal prerogative in America. A student attracted by the title might expect to find here a study of the mutual interdependence of the political and economic parts of the subject and of the influence of the system upon democratic tendencies in the colonies. He would also expect to find some conclusions as to how far the success of

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the system meant subjection in matters of colonial self-control and the subserviency of local needs and desires to the higher demands of the empire. But except for an occasional hint that arouses expectation, these subjects are passed over.

Within the lines that he has laid down for himself, Mr. Beer has contributed a notable piece of work, which in documentation and insight maintains the standard of his earlier volumes. I believe that it would profit every student of political science to read it, if for no other reason than that the political aspects of history cannot as a rule be interpreted without reference to the social and economic needs of a people.

CHARLES M. ANDREWS.

The New City Government. A Discussion of Municipal Administration Based on a Survey of Ten Commission Governed Cities. By HENRY BRUÈRE. (New York and London: D. Appleton and Company, 1912. Pp. vii, 438.)

This volume is a notable example of the practical service which may be rendered to the cause of better municipal government by bureaus of municipal research. It was for the Metz fund of the New York bureau of municipal research that in August and September, 1911, a personal survey of ten commission governed cities was made. The cities selected for the survey are Cedar Rapids and Des Moines, Iowa; Kansas City, Topeka and Wichita, Kansas; Dallas, Fort Worth, Galveston and Houston, Texas; and Huntington, West Virginia.

The present work, the result of the survey, the author presents as a "discussion of commission government—based on an administrative survey—intended to provide a fact basis for judgment regarding the general character of commission government administration." On examining the book one is soon convinced, however, that the "discussion of commission government" is incidental to an exposition of the results of a thorough and searching application to these ten cities of the standards of scientific municipal administration as conceived by the New York bureau of municipal research.

The volume falls logically into two parts. The first five chapters, introductory in their nature, present the "New Standards of City Government," explain the purpose of the survey, and present an exposition of commission government, and its relation to the efficiency movement. In the remaining nine chapters, that portion which gives the work its distinctive value, the author shows in minute detail the manner in

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which such administrative functions as accounting, budget making, and protection of health are exercised by these cities in the light of the standards adopted by the investigators.

Of the several conclusions established these are perhaps the most important. The commission plan does not automatically become an effective instrument for the promotion of public welfare. To secure efficient administration commission government must be supplemented by two things: "a new social sense to animate the work of the officials and to guide the purpose of the citizens who control them," and "a new technique of service to augment returns obtainable from public expenditure." "In matters of administration . . . . commission government has exactly the same path to travel as have other American cities."

A most suggestive chapter deals with the "selection and training of personnel." While the author is doubtless correct in regarding permanency of tenure subordinate to efficiency in service he fails to give sufficient emphasis to the evils resulting from insecure tenure.

Mr. Bruère has led the way into a hitherto neglected field and the results of his effort should be an incentive to similar studies including non-commission governed cities. In this connection it may be suggested that European cities afford excellent material for comparative purposes. It is to be regretted that the author did not draw more largely from such an abundant source.

ORREN C. HORMELL.

L'Alsace-Lorraine et l'Empire Allemand (1871–1911). By ROBERT BALDY. (Montpelier: Firmin and Montane, 1912. Pp. 270.)

In this study M. Baldy examines the relations of the empire and its territory from the standpoint of public law, and describes the agitations and events leading up to the making and changing of the law and the results therefrom. The constitution of 1911, which naturally has aroused interest in the question, since it was avowedly designed to meet the dissatisfaction of the Alsacians and their demand for autonomy, is given special attention.

In 1871 the governing of the territory was in the hands of the emperor who legislated with the consent of the Bundesrat. By 1879 the plan of government which lasted until 1911 was laid down. There was a popular assembly, the Landesausschuss, whose laws were subject to

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the approval of the Emperor and the Bundesrat. The territory was represented in the Reichstag but not in the Bundesrat. The administration was in the hands of the Emperor's representative and appointee, the Statthalter, and the service was recruited from Germans entirely. The constitution of 1911 gives the territory a diet of two houses, removes its legislation from the veto of the Bundesrat, and gives it three representatives in that body. The author shows that the change is hardly more than a formal one. He notes, among other things, that the upper house is practically controlled by the Emperor, the Statthalter remains with his German beaurocracy, and he selects the representatives in the Bundesrat.

Along the second line noted, the author shows the strong particularistic feeling of the Alsacians. He sympathizes so keenly with them, and sees such difficulty in their ever securing autonomy from the Empire that he feels that France must look forward to another war if the tyranny is to be put an end to. The causes of the reluctance to grant autonomy are, roughly, that it would disturb the equilibrium in the Bundesrat, that it would introduce into the Empire the alien doctrine of popular sovereignty, and that it would favor the French attachment of the territory.

W. B. HUNTING.

Penal Philosophy. By GABRIEL TARDE. Translated by Rapelje Howell, editorial preface by Edward Lindsey, and an introduction by Robert H. Gault. (Boston: Little, Brown and Company, 1912. Pp. xxxii, 581.)

This volume of the Modern Criminal Science Series published under the auspices of the American Institute of Criminal Law and Criminology is a work of great interest and value. The author Gabriel Tarde is recognized as an original thinker in three separate fields of knowledge—psychology, sociology and criminology and has pursued successfully the careers of magistrate, statistician and professor of political science, which is an achievement rarely to be recorded.

This book is an examination of ideas put in circulation and brought into favor, during the last few years, by the school of criminal anthropology, and is just as much or more of a setting forth of personal views. The theories developed by Professor Tarde deal with three different matters. In the first place there is an attempt to reconcile moral responsibility with determinism, the human conscience with science,

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which the conception of free will seemed to have separated with an insurmountable gulf, and there is also, and especially, an explanation of the criminal side of societies, in conformity with a general point of view which is applied in another work (*Les lois de l'Imitation*, 1 vol., 8 vo., Feliz Alcan, Publisher, 1890) with the various aspects of social life. Finally, there is a pointing out of some legislative and penitentiary reforms which are the practical conclusions of these theoretical conclusions.

Professor Tarde throughout this work maintains a sufficient balance between conservatism and progressivism to commend him to those who believe that in criminology (including penology) we are in our generation trying a great many experiments: That in many respects we are much wiser than our fathers; that in many other respects we do not know yet how much, if at all wiser we may be than they, for as Mr. Gault says: "The event of experimentation will prove." Which of the various principles and methods will prove best adapted to help our problems can only be told after our workers have tested them in our own experience.

Professor Tarde in his chapter on "The Theory of Responsibility" holds that responsibility made to depend on free will adjudged to be in actual existence is ruined at its very base by the progress of scientific determinism; responsibility made to depend on free will looked upon as an ideal to be realized is nothing more than an illusion, and responsibility based on social utility to the exclusion of everything else has nothing in common with responsibility. He says: "I think that penalties, even though imperfectly applied as they are, render a service to society. But, in order that they shall render it a still greater service, in what direction ought they to be reformed? This problem is being studied now more than ever. It seems to me that, without any very elaborate preparation, we should be in a position to solve the problem."

In his chapter on "The Death Penalty," he says: "The death penalty, is repugnant to me; it has a repugnance for me which I cannot overcome. I have for a long time tried to overcome this feeling of horror, but I have not been able to do so. If all those who refuse to admit the arguments of the partisans of the scaffold will be sincere with themselves, they will likewise recognize that the chief objection is their disgust."

JOHN EDWARD OSTER.

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Pan-Germanism. By ROLAND G. USHER. (New York: Houghton, Mifflin Company, 1913. Pp. 314.)

Dr. Usher's volume reads like a romance. Tiresome details are omitted, the policies of nations are sketched in large and bold characters and the reader is carried on from plot to counter-plot to a grand finale in which he feels a sensible disappointment when told that the ambitious and masterly plans of the villian of the piece can, as conditions stand, meet at best with only "a temporary or partial success." Diplomacy has always been popularly regarded as a peculiarly exciting career, and no one can thread his way through the maze of conflicting policies presented in *Pan-Germanism* without feeling a keen desire to have a hand in the game.

The opening chapter sets forth the causes of foreign aggression. To Germany expansion is a necessary condition of national self-preservation. Emigration as an alternative method of reducing the pressure of population is wholly unacceptable, since Germany would thereby remain static in population and wealth, while England, France and Russia, each possessing colonies, would continue to expand. Thus, while Pan-Germanism is a defensive movement to relieve Germany of the pressure of France and Russia, it is an offensive movement to obtain control of territory and markets held by England.

Subsequent chapters explain the German view of England, France and Russia. Both England and France are inefficiently governed and their control over their colonies is insecure; while Russia is at once badly governed, bankrupt in finance and weak in internal cohesion. On the other hand, Germany is confident of her own strength. Economically, she is self-sufficing and a creditor nation; her government is admittedly efficient and her army and navy are kept in a constant state of preparedness for war. It is true that England and France take a different view of the situation; they are the centers of the world's credit and exchange system and can thus control, to a large extent, the available money resources of the world at any given moment; they realize that Germany is conducting its great industrial business largely upon borrowed money. On the other hand, Germany believes that the economic strength of England and France is dependent upon the preservation of peace, and that if Germany were victorious there would be nothing to prevent her from repudiating her debts, the morality of such a procedure being controlled by the necessity of the situation.

To accomplish her purpose Germany must have a great army and a great navy at her command; she must seize Belgium and Holland, and

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ultimately Norway, Sweden and Denmark; she must win, as her allies, Austria, Italy, the Balkans and Turkey, and to effect this alliance she must be ready to divide the spoils. In the chapters entitled "First Steps" and "First Defeats" the author describes the progress made by Germany towards the accomplishment of her purpose and the reverses she has met with. Her policies in Africa, Venezuela, Turkey, Morocco and Persia are briefly summarized. The Tripolitan war, which brought Italy back to the Triple Alliance, furthered the cause of Pan-Germanism, but this success was more than offset by the Balkan war, the result of which was to range the Balkan states on the side of the Triple Entente.

But while the reader cannot help but be charmed by the clearness of style and the bold positive exposition of policies which characterizes Dr. Usher's book, he will, doubtless, stop abruptly in the course of many a paragraph and wonder upon what evidence the author can make such catagorical statements concerning Germany's plan of world domination. The author protects himself, it is true, by stating that he is merely voicing the German view of the international situation; but while it is not to be denied that there are certain Germans who do hold this view, the important question is how far it is held by the great body of the German people. On page 20, note, the author appears to suggest that Pan-Germanism is the policy of a "great nation of intellectual people," yet on page 267 he clearly shows that Germany is by no means a unit in its foreign policy, and that there is a large body of "irreconcilables" who are radically opposed to Pan-Germanism. In the same way, the attitude of the United States towards the European alliances, as described in chapter X, is certainly not that of the political party in power at present, nor that of the great body of the people, who would be much surprised to learn that they have an "ambition to play a part in the politics of the world" (page 144), and that they are to be the "offensive arm of the Triple Entente (page 156)." The chapter in which the justifiability of Pan-Germanism is argued, presumably from the German point of view, to the overthrow of all accepted standards of morality, is nothing less than amazing.

On the whole, while *Pan-Germanism* must be pronounced a very clever and entertaining book, there is so little scientific evidence furnished to support its premises that its conclusions are necessarily somewhat vague and unsatisfactory. But, while the reader may quarrel with Dr. Usher's dogmatic manner and with many of his sweeping assertions, he will, at the same time, frankly confess that he has never read a more fascinating introduction to the study of present European diplomacy.

CHARLES G. FENWICK.

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The Law of Irrigation and Water Rights. By CLESSON S. KINNEY. (San Francisco: Bender-Moss Company, 1912. Four volumes. Pp. 4558).

The industrial occupation of arid America has been coincident with, indeed dependent upon, the development of types of property rights in natural resources which are quite novel to Anglo-Saxon law. Chief of these is the irrigation water-right which has come to supersede the old common-law riparian right in the utilization of flowing waters on western lands. This very rapid innovation, now affecting some twenty States and over half the area of the United States, is a striking exemplification of the evolution of legal institutions under pressure of environmental agencies and in accord with fundamental economic and social needs.

Twenty years ago, when the west was only beginning to emerge from frontier conditions and to assume substantial industrial and legal institutions, Mr. Kinney published a small volume on the *Law of Irrigation and Water Rights.* The voluminous work under review now appears as a *second edition.* The original work was considered to be an adequate and comprehensive treatment of arid-land water rights as developed in the United States at the time of its publication. The magnitude of the new edition (4558 pages) is itself significant of the growth of irrigation law in recent years.

The reviewer makes no attempt to pass upon the form in which Mr. Kinney has presented his material with regard to its adaptation to the convenience of those of the profession of law. It must be said, however, that the compilation of leading judicial opinion is remarkably complete, and the abstract of state statutes and federal laws is accurate and quite up to date.

It is in his characteristic correlation of the growth of water laws with economic development under the restrictions of climatic conditions that Mr. Kinney has touched upon a theme of general interest. His description of the growth of a new common law, through the recognition on the part of open-minded judges and legislators that changed social and physical conditions justify the abandonment of precedent and *legitimatism* for expedience and *rationalism,* in the direction of industry and the consequent definition of property, is highly suggestive in these times of controversy in the arbitrament of private rights and public interest.

Volume I devotes over a thousand pages to a discussion of the eco-

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nomic aspects of irrigation institutions and to a review of the judicial and legislative abrogation of the common-law doctrine of riparian rights in favor of the western principle of *priority of appropriation and beneficial use.* Volume II is of special interest to the student of political science. It affords a critical treatment of various theories of water-rights and clearly demonstrated the rationalistic tendency of western judges to ignore precedent when necessary to promote and protect industry. In this discussion Mr. Kinney occupies ground in advance of most law texts, and, indeed, is quite abreast of modern legal and political philosophy. Volume III describes in detail prevailing methods of appropriating water for irrigation and the administrative devices now in vogue for state control of the distribution and uses of such water. The respective spheres of local, state, national, and international jurisdiction over flowing waters are admirably treated and with much detail. Volume IV is a careful abstract of the existing laws pertaining to the use of water for irrigation and power purposes in twenty-one states and territorial possessions.

RALPH H. HESS.

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RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

BY CARL HOOKSTADT

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[1]All numbered documents and reports refer to the 63d Congress unless otherwise specified.

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